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A TREATISE

ON

THE LAW OF

INCOME TAX

DESIGNED FOR

THE USE OF THE TAXPAYER AND HIS ADVISERS;

WITH

THE INCOME TAX ACTS APPENDED.

BY

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ONE OF HIS MAJESTY'S COUNSEL.

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PREFACE.

THIS book is an attempt to provide a continuous and self-contained account of the law of income tax, for the information of the taxpayer and of the public. The attempt may be rash; but it seems imperative that it should be undertaken, because the obscurity of the Income Tax Acts has become a bye-word, and because the importance of the subject increases as the value of money declines.

The Income Tax Acts now in force (with the exception of their purely administrative provisions) are appended to the treatise. The consolidation of the previous Acts by that of 1918 has somewhat lightened the task, but has not rendered it unnecessary; for few of the ambiguities and redundancies of the older statutes have been removed, and still fewer of their omissions supplied. The law of income tax affords a perhaps unique instance of a body of law which purports to be contained in statutes, but which in fact rests upon principles that are to be found only in the judgments of the Courts and of the House of Lords, while the statutory directions are often mere illustrations of those principles, and fail to illustrate them exhaustively.

In dealing both with decided cases and with statutory provisions, I have not hesitated to state my own opinion; as regards decisions, I have discussed at some length those which seem open to criticism; as regards sections and rules, I have endeavoured to point out those which seem superfluous or contradictory, and where possible to dovetail those which tend to overlap. It would be too much to hope that in either case the attempt has been successful; it has at least been sincere.

The new system of deductions and allowances, and of relief in respect of Dominion Income Tax, introduced by the Finance Act,

1920, appears, both logically and by reason of its novelty, to require treatment at the outset. I have therefore (after some preliminary remarks on the nature of the income tax) commenced with this part of the subject. There follow accounts of the various forms of income charged under Schedules A, B, C, D and E in that order. Next come chapters on the Persons assessable to income tax (in which connection I have dealt with companies and the payment of dividends "free of tax" and so forth), on Exemptions in favour of charitable and other bodies, and on the Supertax. In conclusion, there are four chapters on the procedure with regard to Returns, Assessment, Appeals and Collection.

The arrangement and notation of the sections, schedules and rules of the Act of 1918 are extremely difficult to follow; for instance, the ascertainment of trade profits is governed (not to speak of certain sections of the Act itself), by three separate sets of rules in different parts of the Schedules: the Rules applicable to Cases I. and II., the Miscellaneous Rules of Schedule D., and the General Rules; and illustrations of these intricacies might be multiplied. In order to guide the reader through them, each time that reference is made to a fresh provision of the Income Tax Acts, the exact page in the Appendix on which that provision is to be found has been indicated in the footnotes. The Table of Statutes also shows the reference in the text to each provision of those Acts; I have endeavoured to make the Index as complete as possible and to provide ample cross-references.

My thanks are due to my learned friends, Mr. Morres Nickalls, M.C., and Mr. M. Trustram Eve, M.C., both of the Inner Temple; to the former for much valuable advice in the revision of the book, and to the latter for help in seeing it through the Press.

E. M. K.

Temple,
19*th March*, 1921.

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NOTE.—In the footnotes references to sections or rules refer to the Income Tax Act, 1918, unless the contrary is indicated.

References to the—		*are intended to refer to the—*
"Act of 1918"	.....	Income Tax Act, 1918.
"Act of 1919"	.....	Finance Act, 1919.
"Act of 1920"	.....	Finance Act, 1920.

At the time of going to press, appeals in the cases of *National Provident Institution* v. *Brown*, [1920] 3 K. B. 35, and *I. R.* v. *Blott*, [1920] 1 K. B. 114, were under consideration in the House of Lords. The decision of the Court of Appeal in *R.* v. *Special Commissioners, Ex parte Dr. Barnardo's Homes*, [1920] 1 K. B. 468, had been affirmed, [1921] W. N. 105.

THE LAW OF INCOME TAX.

CHAPTER I.

THE INCOME TAX AND ITS GRADUATION: DOMINION INCOME TAX.

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The Income Tax.

THE income tax is a tax on "income" from various sources, estimated according to sets of rules which vary according to the source of the income; many of these sets of rules are highly artificial, so that income for income tax purposes does not by any means necessarily correspond with income in the colloquial sense of money which the recipient receives in the year and which he can spend or save. But for income tax purposes "income" must be something capable of being turned into money (*a*); a mere privilege, though it may be of value to the person who enjoys it, is not a part of his income (*b*). On the other hand, an accretion of capital is not "income" (*c*), although income does not escape income tax merely because it is used to increase or recoup capital (*d*); nor is it any the less "income" because its production involves a wastage of capital (*e*).

(*a*) *Tennant* v. *Smith*, [1892] A. C. 150, *infra*, p. 25.

(*b*) In theory at any rate, even the annual value on which the tax is charged under Schedule A is capable of being realized by letting the property at a rack-rent.

(*c*) *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 424, *infra*, p. 138.

(*d*) See, *e.g.*, *Granite Supply Assn.* v. *Kitton* (1905), 5 Tax C. 168, *infra*, p. 153; *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267, *infra*, p. 153.

(*e*) *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315, *infra*, p. 82.

The tax is in theory imposed year by year; in practice it is permanent, and varies from year to year only as to the maximum rate at which it is charged.

The Schedules.

"Income" is grouped, according to the sources from which it is derived, under five Schedules, A, B, C, D, and E (*f*). This division is not a scientific one; Schedule A relates to property in land, &c., but includes certain trading concerns; Schedule B to the occupation of land (other than ordinary dwelling-houses and business premises), whether or not it is occupied for business or agriculture; Schedule C relates to interest, &c. payable out of public revenues; Schedule D includes in its scope all other kinds of interest, discounts, &c., trades and professions (but not agriculture, except at the option of a particular occupier of land), foreign possessions and securities, and miscellaneous sources of income; Schedule E relates to certain offices and employments, while others are taxed under Schedule D, so that the employee of a company is taxed under one Schedule, and the employee of a partnership under another.

These Schedules are much the most important part of the Act of 1918; but because they are called "Schedules," they are shown as a mere appendage to that Act, and are included in its so-called "First Schedule" (*g*).

Each of the Schedules (A, B, C, D, E) contains its own rules of assessment; but many are found scattered about the Act itself. The provisions of the Schedules are, however, mutually interchangeable so far as they are applicable (*h*).

The Income Tax is One Tax.

The "unfortunate arrangement" of the Schedules as a mere supplement to the Act has, however, one point in its

(*f*) Income Tax Act, 1918, s. 1, *infra*, p. 339; *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1.

(*g*) See Report of the Royal Commission on Income Tax, 1920, Cmd. 615, para. 402.

(*h*) Sect. 208, *infra*, p. 399.

favour; it shows that the income tax, under whatever Schedule it happens to be charged, is one tax. In the past a different view was sometimes taken, until the decision of the House of Lords in *London County Council* v. *Attorney-General* (*i*); but the following passage from the speech of Lord MACNAGHTEN in that case contains the classic statement of the nature of the tax:—

"Income tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct. There is no difference in kind between the duties of income tax assessed under Schedule D, and those assessed under Schedule A or any of the other Schedules of charge. One man has fixed property, another lives by his wits; each contributes to the tax if his income is above the prescribed limit. The standard of assessment varies according to the nature of the source from which taxable income is derived. That is all. Schedule A contains the duties chargeable for and in respect of the property in all lands, tenements, and hereditaments capable of actual occupation. There the standard is annual value. It is difficult to see what other standard could have been adopted as a general rule. But there again, if the subject of charge be lands let at rack-rent, the annual value is "understood to be the rent by the year at which the same are let." In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on "profits or gains," in the case of duties chargeable under Schedule A and everything coming under that Schedule—the annual value of lands capable of actual occupation as well as the earnings of railway companies and other concerns connected with land—just as much as it is in the case of the other schedules of charge. And it is to be observed that the expression "profits or gains" which occurs so often in the Income Tax Acts is constantly applied without distinction to the subjects of charge under all the schedules."

(*i*) [1901] A. C. 26; see pp. 35, 36; see also the case last cited.

Direct Assessment or Deduction at the Source.

The speech just quoted was delivered in one of the leading cases that have arisen in connection with deduction of tax "at the source." The person who is ultimately liable for the tax either pays it under a direct assessment, or submits to a deduction of tax at the hands of some other person from whom he is entitled to receive money; and so important is the latter method of collection that at the present day at least 70 per cent. of the yield of the tax is collected by it (*k*). The tax charged under Schedule A is, in general, payable by the occupier of land; but if he is a tenant, he can deduct tax against his landlord on payment of rent. An owner of land, if he is also the occupier, pays the tax directly; but whether he has paid it himself or borne it by way of deduction, he is entitled to deduct tax against a mortgagee (*l*).

Again, the tax on interest on public securities is deducted by the authority or agent who pays the interest (*m*). A company is taxable on the whole of its profits, and deducts the tax in paying dividends (*n*); but an individual or a partnership carrying on business is directly assessed (*o*). The tax charged on the offices and employments specified in Schedule E is largely deducted at the source (*p*).

Where a payment out of profits gives the payer a right to deduct tax, he cannot also have his assessment reduced by the amount of the payment (*q*).

The Income Tax Year.

The year of assessment for the purposes of income tax begins on the 6th April and ends on the following 5th April (*r*). Although the profits of the preceding year or

(*k*) Report of Royal Commission, para. 154.
(*l*) *Vide infra,* pp. 55, 59.
(*m*) Schedule C; see Chap. V.
(*n*) See pp. 243 *sqq., infra.*
(*o*) See pp. 240 *sqq., infra.*
(*p*) See Chap. XI.
(*q*) Income Tax Act, 1918, s. 209 (1) (a), *infra,* p. 399.
(*r*) Sect. 2, *infra,* p. 339. In the Income Tax Acts from 1919 onwards, the

of an average of previous years are in many instances taken as the basis of assessment, yet no income tax is levied in respect of any source of income unless the person assessed has possessed that source of income during the year of assessment (*s*).

"On the general scheme of the Income Tax Acts it is clear that an assessment for any year requires a taxable subject-matter in that year, though the conventional value of the income from that subject-matter may be measured in the first instance by the average income of previous years" (*t*).

The tax is payable in one or two instalments for the year according to the source of income on which it is imposed; in the case of railway companies and of weekly wage-earners it is payable quarterly (*u*).

The Income Tax Acts.

The passage just quoted brings out clearly a matter of importance, namely, that many of the cardinal principles on which the liability to income tax is based and by which the amount of that liability is measured, are unexpressed in the Income Tax Acts, but have had to be inferred by the Courts from their "general scheme." For instance, the Acts may be searched in vain for any explicit direction that a mere privilege is not to be charged as income (*x*); that an accretion of capital is not so chargeable (*y*); that the question whether a company carries on business in the United Kingdom is to be answered by ascertaining where its head and seat and directing power are situate (*z*); that

year of assessment beginning as above is described as "the year 1919-20," "the year 1920-21," and so on; Finance Act, 1919, s. 28, *infra*, p. 466.

(*s*) *National Provident Institution* v. *Brown*, [1920] 3 K. B. 35, *infra*, p. 200; this is not true of super-tax: *FitzGerald* v. *I. R.*, [1919] 2 K. B. 154, *infra*, p. 277.

(*t*) [1920] 3 K. B., per SCRUTTON, L.J., at p. 61.

(*u*) *Vide infra*, p. 330.

(*x*) *Tennant* v. *Smith*, *supra*, p. 1.

(*y*) *Stevens* v. *Hudson's Bay Co.* (1909), 5 Tax C. 424; *I. R.* v. *Blott*, [1920] 2 K. B. 657.

(*z*) See, *e.g.*, *De Beers Consolidated Mines* v. *Howe*, [1906] A. C. 455, and the cases cited therewith, *infra*, pp. 113 *sqq.*

in computing the profits of a trade any expense (as to which there is no express prohibition) is to be deducted, if on the facts of the case it is a proper debit item to be charged against incomings (*a*).

The Income Tax Acts, therefore, do not provide a code of the law on the subject (*b*). They consist of a number of more or less disconnected enactments which leave undealt-with many matters of the first importance; while they frequently cover the same ground more than once, in such a manner that the reader is puzzled to know whether the second enactment is intended to limit or expand the first, or is merely superfluous (*c*).

Until 1918 these enactments were contained in a series of Acts commencing with the Income Tax Act, 1842 (*d*), of which that Act, the Income Tax Act, 1853 (*e*), and the Taxes Management Act, 1880 (*f*), were the most important. They were repealed, re-arranged and re-enacted with some verbal amendments by the Income Tax Act, 1918 (*g*).

The Finance Act of each year contains, as a rule, a common form of clause applying to the income tax sanctioned thereby the enactments in force in the previous year (*h*), subject of course to any amendments contained in the Finance Act itself. By virtue of this provision, the

(*a*) *Usher's Wiltshire Brewery, Ltd.* v. *Bruce,* [1915] A. C. 433, *infra,* p. 135.

(*b*) Report of Royal Commission, paras. 398—401.

(*c*) See, for instance, the rules in No. IV. of Schedule A "for estimating annual value," *infra,* p. 411, which appear to be mere illustrations, selected at random and far from exhaustive, of the application of the definition of "annual value" in the General Rule (in the definition itself (*vide infra,* p. 34) all but the last thirteen words are mere surplusage); the rules as to the method of assessment in Schedule E, *infra,* pp. 447—451; the provisions as to "additional assessments" and "surcharges" in sects. 125 and 126 (*infra,* p. 370), where sect. 126 deals in a different way with one class of the cases already dealt with by sect. 125.

(*d*) 5 & 6 Vict. c. 35. This Act itself reproduced many of the provisions of Acts of 1799 (39 Geo. 3, c. 13) and 1803 (43 Geo. 3, c. 122): see per Lord MACNAGHTEN in *London County Council* v. *A.-G.*, [1901] A. C. at pp. 37, 38.

(*e*) 16 & 17 Vict. c. 34.

(*f*) 43 & 44 Vict. c. 19.

(*g*) 8 & 9 Geo. 5, c. 40. This Act came into operation on 6th April, 1919, and does not apply to tax in respect of any year previous to the year which commenced on that date: sect. 239, *infra,* p. 408. Regulations, &c. made under previous Acts are continued in force by sect. 238.

(*h*) See Act of 1920, sect. 14 (2); as to super-tax, see sect. 15 (3).

income tax is now regulated by the Income Tax Act, 1918, Part II. of the Finance Act, 1919 (*i*), and Part II. of the Finance Act, 1920 (*k*), save so far as the first two Acts are amended by the third. They are set out at the end of this book. The amendments made by the Act of 1920 are of great importance; apart from minor matters, they substitute a new system of graduation and allowances for the old, and they enact a code for relief against double payment in respect of Dominion income tax (*l*).

Although the "standard rate" or "full rate of income tax charged for the year" (*m*), is not fixed until the Finance Act for the year is passed, the provisions in force on the last day of the preceding year are carried forward in order to enable arrangements for assessment and collection at the source and so forth to proceed continuously at any time of the year (*n*); and provision is made for subsequent deduction where the amount already deducted proves insufficient owing to the new Finance Act imposing tax at a higher rate (*o*).

Construction of the Acts.

The intention with which the Income Tax Act, 1918, was passed, was to consolidate (*p*) and not to codify the earlier enactments; there was no attempt to harmonize them, and in but few places were any existing ambiguities removed. Even apart from the fact (to which attention has already been drawn) that many of its underlying principles can only be gathered by implication, it is extraordinarily difficult to interpret. Ordinary canons of construction cannot be applied; it is unsafe to assume without diligent study that the same word is used in two places in the same sense, that different words are not used to

(*i*) 9 & 10 Geo. 5, c. 32.

(*k*) 10 & 11 Geo. 5, c. 18.

(*l*) These topics are dealt with in the present Chapter.

(*m*) Act of 1920, s. 33.

(*n*) Act of 1918, s. 210, *infra*, p. 399.

(*o*) Sect. 211. There is as yet no provision for the not inconceivable case of a Finance Act imposing the tax at a lower rate than that of the previous year.

(*p*) See the title of the Act, *infra*, p. 339; and Report of Royal Commission, paras. 4, 398.

mean the same thing, or that any series of expressions or any set of provisions is intended to be exhaustive, so that what is not mentioned is excluded. "In these Acts," says Lord WRENBURY (*q*), speaking of the Acts of 1842 and 1880, "it is not possible to rest any conclusion upon a particular word. The same word is in one section used in one sense, and in another, in a different sense . . . . From a change of language, I should in the absence of other considerations infer a change of meaning. But I cannot do so in this case . . . . The change of language is attributed only to the very indifferent drafting which is found throughout this most complicated and ill-digested Act"; and Earl LOREBURN adds (*r*), "I regret to say that in this respect (*s*) the language of the different Acts is not coherent. You may strain the language to mean either one thing or the other. You must strain it to arrive at any conclusion." Except in a small number of instances, the language of the Act of 1918 is open to the same strictures, and is as difficult to interpret, as that of the earlier Acts.

It is often said that a taxing Act must be construed strictly in favour of the subject; it may perhaps be more correct to say that a taxing Act must be construed against either the Crown or the person sought to be charged, with perfect strictness—so far as the language of the Act enables the Judges to discover the intention of the Legislature. "No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden upon him . . . . The only safe rule is to look at the words of the enactments and see what is the intention expressed by those words" (*t*). In the case in which that language was used, the House of Lords refused to depart from the strict reading of the Act in order to find a fairer and more

(*q*) In *Kensington Commrs.* v. *Aramayo,* [1916] 1 A. C. at pp. 227—229; see also his lordship's opening remarks at p. 225.

(*r*) *Ibid.* at p. 236.

(*s*) The matter in question in *Aramayo's* case is one of the very few that are elucidated by the Act of 1918, *vide infra,* p. 298.

(*t*) Per Lord BLACKBURN in *Coltness Iron Co.* v. *Black* (1881), 6 A. C. at p. 330, *vide infra,* p. 72; see also per ROWLATT, J., in *Cape Brandy Syndicate* v. *I. R.,* [1921] 1 K. B. at p. 71.

equitable way of taxing the subject; neither, on the other hand, will the Courts depart from it so as to bring within the scope of the tax any matter upon which Parliament has not, on a strict reading of the Act, imposed the tax (*u*). "I know of no law which prevents a man from avoiding a duty which has not attached to the property . . . . A man is perfectly entitled, if he can, to avoid the payment of duty by disposing of his property in any way not forbidden by the Act. The argument that his motive is to escape duty appears to me wholly irrelevant, because a man is perfectly justified in avoiding and escaping the duty which will arise in the future, but which has not yet attached to any property which he possesses" (*x*). These words were spoken of estate duty, but they are equally true of income tax.

Application to the Three Countries.

The Income Tax Acts apply to the whole of the United Kingdom; although there are a series of special provisions modifying their application in Ireland (*y*) (chiefly as to the methods of assessment), and a few modifications also as regards Scotland (*z*). The decisions of the Courts in any of the three countries are not binding upon the Courts of any other, but are generally followed (*a*). But a decision of the House of Lords upon a case from any one of the countries is binding in the other two. In deciding a point on which there had been a conflict of decision between the English and Scottish Courts, the House of Lords have adopted the following rule—"You must take the meaning of legal expressions from the law of the country to which they properly belong, and in any case arising in the sister

(*u*) Cf. *A.-G.* v. *Richmond and Gordon (Duke)*, [1908] 2 K. B. 729; [1909] A. C. 466.

(*x*) Per FARWELL, L.J., [1908] 2 K. B. at p. 743.

(*y*) These will be found in Part IX. ss. 186—206, *infra*, p. 393.

(*z*) See, *e.g.*, sects. 35, 85, 96, 166.

(*a*) The few points on which divergent decisions have been given in the different countries are noted in the text as they occur; see, *e.g.*, *Howe (Earl)* v. *I. R.*, [1919] 2 K. B. 336, *infra*, p. 282; *London Cemetery Co.* v. *Barnes*, [1917] 2 K. B. 496, *infra*, p. 91; *Leith, &c. Steam Packet Co.* v. *Musgrave* (1899), 1 F. 1117, *infra*, p. 160.

country you must apply the statute in an analogous or corresponding sense, so as to make the operation and effect of the statute the same in both countries"; it is not true to say that, "if the words have a definite legal meaning in England, you must not look at that meaning unless it be in vogue north of the Tweed" (*b*).

Graduation of the Tax.

The income tax is graduated in its application to individuals by means of what are termed "allowances and deductions"; and these will be considered at the outset, before discussing in detail the various sources of income which give rise to liability and the principles of assessment. The relief given in respect of Dominion Income Tax and of Life Insurance Premiums will also be considered in this Chapter, because these also apply to incomes at large and do not depend on the source from which they are derived. Exemptions and abatements which attach to particular sources of income (*c*) of certain classes of bodies and institutions, are dealt with in a later chapter (*d*). The super-tax, which represents a further stage of graduation, is treated separately (*e*).

Wounds and disability pensions (*f*) and war gratuities (*g*) are exempt from income tax.

What Persons are Entitled to Allowances and Deductions.

Companies and other bodies of persons are liable to pay income tax at the full rate whatever the amount of their income, and upon the whole of their income, subject of course to any special exemption or relief to which they may be entitled (*h*).

(*b*) *Special Commrs.* v. *Pemsel,* [1891] A. C. 531, *infra,* p. 261, per Lord MACNAGHTEN at p. 580.

(*c*) See *Coman* v. *Rotunda Hospital* (*Governors*), [1921] 1 A. C. 1, *infra,* p. 109.

(*d*) See Chap. XIII.

(*e*) See Chap. XIV.

(*f*) Finance Act, 1919, s. 16, *infra,* p. 463.

(*g*) Sect. 17, *infra,* p. 464.

(*h*) See Chaps. XIII. and XV.

The allowances and deductions (*i*) now to be described, and the relief in respect of life insurance premiums and similar payments, are given to individuals only (*k*), including a husband and wife in certain circumstances (*l*) and partners in trades or professions and joint owners or tenants of land according to their respective interests (*m*). They are not given to any individual not resident (*n*) in the United Kingdom unless he is a British subject, or unless he belongs to one of the classes described below. In these excepted cases the allowance, deduction or reduction of rate, or relief, is calculated in proportion to the whole of his income, including any part which is not subject to United Kingdom income tax (*o*). The following are the classes referred to:—persons who are or have been employed in the service of the Crown, widows of such persons, persons who are employed in the service of any native State under the protection of His Majesty, persons who are employed in the service of any missionary society, persons resident in the Isle of Man or Channel Islands, persons who have previously resided within the United Kingdom and are now resident abroad for the sake of their own health or that of a member of their family resident with them. If the claimant is a British subject, he need not belong to any of these classes; but his income not chargeable in the United Kingdom is nevertheless brought into the calculation, if he is resident abroad.

The facts as to the status or residence of the claimant must be proved to the satisfaction of the Commissioners of Inland Revenue, with an appeal to the Special Commissioners (*p*).

(*i*) Finance Act, 1920, Third Sched. note at end, *infra*, p. 480.

(*k*) Sects. 16, 17, 23, *infra*, pp. 468, 471. This was the law even before the passing of the Act of 1918: see *Curtis* v. *Old Monkland, &c. Assocn.*, [1906] A. C. 86; *Mylam* v. *Market Harborough Advertiser Co.*, [1905] 1 K. B. 708; but with the language of the provisions now in force those decisions are no longer needed.

(*l*) Finance Act, 1920, ss. 18, 25, *infra*, pp. 469, 472; Income Tax Act, 1918, General Rules, rr. 16, 17, *infra*, p. 454.

(*m*) Act of 1918, s. 20, *infra*, p. 343. As to earned income, however, see sect. 14 (3).

(*n*) *Vide infra*, pp. 248 *sqq*.

(*o*) Finance Act, 1920, s. 24, *infra*, p. 471.

(*p*) Sect. 24 (2). As to appeals, see Chap. XVII.

Amount of Income Chargeable: Rate of Tax.

In the case of an individual, then, the amount of the income on which tax is levied, and the rate at which the tax is levied, are calculated as follows (*q*):—

One-tenth of the "earned income" (*r*) is first deducted from the total income; but the deduction may not in any case exceed 200*l.* (*s*).

The net sum thus arrived at is called the "assessable income" (*t*); from it, there is deducted in the case of a married couple, 225*l.*, with a further sum if the wife herself has an earned income; in the case of a single man or woman, 135*l.* (*u*); and certain further deductions are made in respect of children and other dependants (*x*). The deduction of 225*l.* in the case of a married couple is not allowed (*u*) unless either (1), the husband and wife are living together, or (2) (even if she is not living with him) the wife is wholly maintained by the husband during the year of assessment in such a way that in paying for her maintenance he is unable to deduct tax against the sums paid, and therefore to exclude those contributions from his total income as ascertained for income tax purposes (*y*). In any other case, the husband is entitled to a deduction of 135*l.* only, as if he were single (*z*); if the wife is living apart and is carrying on a trade or is entitled to any property or profits to her separate use, she is assessable separately from her husband (*a*), and is therefore also entitled to the deduction of 135*l.*

Where the deduction of 225*l.* is admissible in the case of a married couple, and the total income includes any earned

(*q*) The following paragraphs are based on the lucid exposition given by Mr. Baldwin, Secretary to the Treasury, in the House of Commons: Parly. Debates, 7th July, 1920, cols. 1558—9.

(*r*) As to the meaning of this expression, *vide infra*, p. .

(*s*) Finance Act, 1920, s. 16, *infra*, p. 468.

(*t*) Sect. 33, *infra*, p. 477, and sect. 16.

(*u*) Sect. 18, *infra*, p. 469; sect. 25, *infra*, p. 472.

(*x*) *Vide infra*, p. 16.

(*y*) As to cases in which tax can be deducted against payments made for a wife's maintenance, *vide infra*, p. 199.

(*z*) Finance Act, 1920, s. 18, *infra*, p. 469.

(*a*) *Vide infra*, p. 257.

income of the wife, the amount of the deduction is increased by nine-tenths of the wife's earned income; the increase is limited to 45*l.* (*b*). This increase does not detract from the full deduction allowed by sect. 16 (*c*) being calculated on the aggregate earned incomes of husband and wife.

The result, after making these various deductions from the assessable income, is called the "taxable income" (*d*). Of that taxable income, the first 225*l.* is taxed at half the full rate of income tax charged for the year (*e*); the remainder at the full rate (*f*), which is called the "standard rate" (*g*), and which is at present 6*s.* in the £ (*f*).

It seems futile to multiply examples of the various possible sets of facts, but the few that follow may perhaps be of some use as illustrating these rules:—

(1) a single man or woman who has an income of 135*l.* or less pays no tax;

(2) a married couple in the circumstances above stated who have an income of 225*l.* or less pay no tax;

(3) a single man or woman who has an income (wholly earned) of 150*l.* or less pays no tax;

(4) a married couple as above who have an income (wholly earned) of 250*l.* or less pay no tax;

(5) the tax payable by a single man or woman who has an income (none of it earned) of 360*l.* is 3*s.* in the £ on 225*l.*;

(6) the tax payable by a married couple as above who have an income (none of it earned) of 450*l.* is 3*s.* in the £ on 225*l.*;

(7) the tax payable by a single man or woman who has an income (wholly earned) of 400*l.* is 3*s.* in the £ on 225*l.*;

(8) the tax payable by a married couple as above who

(*b*) Sect. 18 (2).
(*c*) *Vide infra*, p. 14.
(*d*) Sect. 17, *infra*, p. 469.
(*e*) Sect. 23, *infra*, p. 471.
(*f*) Sect. 14 (1), *infra*, p. 467.
(*g*) Sect. 33, *infra*, p. 477.

have an income (wholly earned by the husband) of 500*l.* is 3*s.* in the £ on 225*l.*;

(9) the tax payable by a married couple as above who have an income (none of it earned) of 1,000*l.* is 3*s.* in the £ on 225*l.* *plus* 6*s.* in the £ on 550*l.*;

(10) the tax payable by a married couple as above who have an income (wholly so earned) of 1,000*l.* is 3*s.* in the £ on 225*l.* *plus* 6*s.* in the £ on 450*l.*:

(11) the tax payable by a married couple as above who have an income of 1,000*l.* (of which 500*l.* is so earned) is 3*s.* in the £ on 225*l.* *plus* 6*s.* in the £ on 500*l.*;

(12) the tax payable by a married couple as above who have an income (wholly so earned) of 2,500*l.* is 3*s.* in the £ on 225*l.* *plus* 6*s.* in the £ on 1,850*l.*

Earned Income.

As already stated, in order to arrive at the assessable income of an individual, one-tenth of his "earned income" is to be deducted from his total income; but this deduction is not to exceed 200*l.* (*h*). So that if his earned income is, say, 1,700*l.*, the deduction is 170*l.*; but if it is 2,300*l.*, the deduction is 200*l.*

In general terms it may be said that the definition of "earned income" covers salaries, wages and pensions, as well as the profits of any trade, business or profession, carried on by the individual himself; but not the interest on the investment of savings out of any of those sources of income. Only the following kinds of income, then, are included by the definition of the term (*i*);—

income arising in respect of any remuneration from any office or employment of profit (*k*) held by the individual;

income arising in respect of any pension, superannuation,

(*h*) Finance Act, 1920, s. 16, *infra*, p. 468.

(*i*) Act of 1918, s. 14 (3), read with Finance Act, 1920, s. 33, *infra*, pp. 342, 477.

(*k*) If the office or employment is "public" within the meaning of Sched. E, it is charged under that Schedule: see Chap. XI.; if not, under Sched. D, Case I. or Case II.: see Chaps. VI. and VII.

or other allowance, deferred pay or compensation for loss of office, given in respect of the past services in any office or employment of profit of the individual or of her husband or his or her parent; it makes no difference whether the individual, husband or parent has contributed to the pension, &c. or not (*l*);—

income in respect of any pension, &c. given to the individual in respect of the past services of any person deceased (whether or not those services have been done in any office or employment of profit) (*l*);—

income arising in respect of Civil List pensions (*m*);—

income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual (*n*);—

any income charged under Schedule B (*o*), provided that it "is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual, or, in the case of a partnership, as a partner personally acting therein";—

any income charged under Schedule D (*p*), provided as above;—

any income charged under the rules applicable to Schedule D,—that is, income of any of the concerns described in rules 1, 2 and 3 of No. III. of Schedule A (*q*),—provided as above;—

in certain circumstances the annual value of a house

(*l*) If the pension, &c. is payable by the Crown or out of the public revenue of the United Kingdom it is charged under Sched. E: see Chap. XI.; otherwise under Sched. D, Case III.: see Chap. VIII.

(*m*) Taxed under Sched. E: see Chap. XI.

(*n*) See note (*k*), *supra*. If the property is land the income is charged under Sched. A: see Chap. II. Note that the privilege of occupying a residence rent free by virtue of an office or employment of profit is not taxable income at all: *Tennant* v. *Smith*, [1892] A. C. 150, *infra*, p. 26.

(*o*) That is, income arising from the occupation of land: see Chap. IV.

(*p*) In view of the words of limitation quoted, the great majority of cases of earned income charged under Sched. D must fall within Cases I. and II. of Sched. D: see Chaps. VI. and VII.; but it is not inconceivable that some may fall within other Cases of that Schedule: see Chaps. VIII., IX., X.

(*q*) Sched. A, No. III. r. 8, *infra*, p. 411; see Chap. III.

occupied rent free by a clergyman or minister of any religious denomination (*r*).

It will be observed that where a trade, profession or vocation is carried on in partnership, the income of a sleeping partner is not "earned income"; still less is that of a shareholder in a company.

In order to be "earned income," the profits must be earned by the individual to whom they belong; and the income of a business carried on by trustees on behalf of minors (*s*), or by a curator on behalf of a lunatic (*t*), is not earned income.

Where husband and wife are living together the profits of either the husband or wife may be "earned income"(*u*), and if the wife herself has an earned income, the allowance will be calculated upon the aggregate of the earned incomes of husband and wife. In such a case an addition is also made to the personal allowance (*x*).

Deductions for Dependants other than Wives (*y*).

In addition to the deduction of 225*l.* in the case of a married couple in certain circumstances or of 135*l.* in any other cases, the following deductions with regard to other dependants are allowed before arriving at the taxable income, provided that no deduction is made from any other person's income in respect of the same dependant (*z*):—

A widower or widow who has a female relative (*a*) (or in the absence of any such relative, another female person)

(*r*) Finance Act, 1919, s. 22, *infra*, p. 465. See *M'Dougall* v. *Sutherland*, *infra*, p. 26.

(*s*) *Fry* v. *Shiels' Trustees*, [1915] S. C. 159; 6 Tax C. 583.

(*t*) *M'Dougall* v. *Smith* (1918), 56 S. L. R. 90; 7 Tax C. 134.

(*u*) Act of 1918, s. 14 (3), *infra*, p. 342. As to assessment of husband and wife, *vide infra*, p. 257.

(*x*) *Vide supra*, p. 12.

(*y*) It has not been thought necessary to deal fully with these provisions in the text; reference should be made to the sections themselves.

(*z*) Finance Act, 1920, s. 19 (1), provisoes (a), (b); s. 20 (b); s. 21 (2), *infra*, pp. 469 *sqq*.

(*a*) "Relative" includes a person who while under sixteen was in the custody of the claimant and was maintained by him at his own expense: sect. 33.

living with him or her to take care of any child (*b*), a deduction of 45*l.* (*c*);

An unmarried man who has living with him and maintains his mother (if a widow or living apart from her husband), or some other female relative (*d*), to look after a child-brother or child-sister (*b*) a deduction of 45*l.* (*e*);

A person having living with him a child, who is not entitled in his own right to an income exceeding 40*l.* a year (scholarships, bursaries and similar educational endowments are left out of account) (*f*), whether the child is the person's own child or stepchild, or a child of whom he has the custody and whom he maintains at his own expense, a deduction of 36*l.* for the first child, and 27*l.* for each subsequent child; if the child is over sixteen, he must be receiving full-time instruction at an educational establishment (*g*);

A person maintaining at his own expense a relative (*h*) incapacitated by old age or infirmity, or his or his wife's widowed mother, whether incapacitated or not, if the total income of the incapacitated relative or the widowed mother does not exceed 50*l.* a year, a deduction of 25*l.* in respect of each person so maintained; the deduction is to be apportioned if the person is maintained jointly (*i*);

A person who by reason of old age or infirmity is compelled to depend upon the services of a daughter resident with him and maintained by him, a deduction of 25*l.* (*i*).

(*b*) Child (where the parent is a claimant) includes a stepchild and an illegitimate child whose parents have married each other after his birth; in any case the child must be under sixteen or be receiving full-time educational instruction: sect. 21 (1), sect. 19 (2), sect. 20 (a).

(*c*) Sect. 19.

(*d*) See note (*a*), p. 16.

(*e*) Sect. 20.

(*f*) See p. 18.

(*g*) Sect. 21. An illegitimate child is included if the parents have married each other since his birth.

(*h*) See note (*a*), p. 16.

(*i*) Sect. 22.

Scholarships, &c.

Income arising from a scholarship, exhibition, bursary or similar educational endowment held by a person receiving full-time instruction at a university, college, school or other educational establishment is exempt from income tax and super-tax, and is to be excluded in computing income (*i*).

Life Insurance Premiums and Similar Payments.

A limited amount of relief is given by way of reduction or repayment of tax in respect of life insurance premiums and certain other payments of a similar kind (*k*). This relief is only admissible to individuals of the same classes described above as being entitled to allowances and deductions (*l*). The classes of premiums and payments which give rise to such relief are as follows:—

First (*m*), premiums paid for an insurance on a man or woman's own life or on that of his wife or her husband with any insurance company legally established in the United Kingdom or a British possession, or lawfully carrying on business in the United Kingdom, or with a registered friendly society (*n*). Such insurances include policies under which a sum is to be paid either on the death of the assured, or upon his attaining a certain age (*o*). It follows from the judgments in the case in which that was decided that they also include policies under which no payment is to be made on death, but only if a certain age is attained; but with certain specified exceptions, no relief is given in respect of premiums paid under such an insurance as this, if made after 22nd June, 1916 (*p*). The relief is admissible whether the payment

(*i*) Finance Act, 1920, s. 28, *infra*, p. 477.

(*k*) Act of 1918, s. 32, as amended by Finance Act, 1920, s. 26, and Third Schedule, *infra*, pp. 347, 473, 479.

(*l*) Act of 1918, s. 24 (1): *vide supra*, p. 11.

(*m*) Sect. 32 (1) (a) and (8).

(*n*) *Vide infra*, p. 271.

(*o*) *Gould* v. *Curtis*, [1912] 1 K. B. 635; [1913] 3 K. B. 84.

(*p*) Sect. 32 (3) (e) (ii). The meaning of "or other payment" in this paragraph is obscure: see *Turton* v. *O'Brien*, *infra*, 7 Tax C. per ROWLATT, J., at p. 175.

is made by the husband, or by the wife out of her separate income (*q*); and if they are separately assessed "as if they were not married" the relief is given to the party making the payment (*r*).

Secondly, premiums paid "for" any contract for any deferred annuity on a man or woman's own life or the life of his wife or her husband with any such insurance company, with a registered friendly society or with the National Debt Commissioners (*s*). What is said in the last paragraph as to payments by husband or wife applies here also.

Thirdly, sums paid by any person in fulfilment of a liability imposed by any Act of Parliament or by the terms and conditions of his employment, for the purpose of securing a deferred annuity to his widow, or provision for his children after his death (*t*).

Fourthly, sums deducted from any person's salary or stipend under such a liability and for such a purpose (*u*).

The premium, payment or deduction in any of these cases need not be an annual one; and payment under a single-premium policy affords a ground for relief; so also, it would seem, does a lump sum paid in commutation of future payments (*x*).

In a case of insurance (or of a contract for a deferred annuity) where the insurers receive only a part of the premium in cash and debit the assured with the remainder as a loan bearing interest, the assured is only entitled to relief in respect of the cash sum actually paid by him (*y*).

The application of these provisions is, however, modified as regards cases where the insurance or the contract for a deferred annuity has been made after

(*q*) Act of 1918, s. 32 (8), inserted by Finance Act, 1920, s. 26 (7).

(*r*) Finance Act, 1920, s. 25 (1) (c), proviso, *infra*, p. 472.

(*s*) Act of 1918, s. 32 (1) (a) and (8).

(*t*) Sect. 32 (1) (b).

(*u*) Sect. 32 (1) (b). See also pp. 231 *sqq.*, *infra*.

(*x*) *Turton* v. *O'Brien* (1919), 7 Tax C. 170, was a decision to the contrary before the passing of the Finance Act, 1920; sect. 26 (1) of this Act amends sect. 32 of the Act of 1918 as recommended in the Royal Commission's Report: see paras. 293, 300.

(*y*) *Hunter* v. *Rex*, [1904] A. C. 161.

22nd June, 1916. Where such is the case no relief is to be given except in respect of premiums or other payments (*z*) payable on policies for securing a capital sum on death (whether in conjunction with any other benefit or not), and none is to be given in respect of premiums or payments payable during the period of deferment in respect of a policy of deferred assurance (*a*). There is an exception again to this exception: premiums or payments on policies and contracts in connection with such superannuation or pension schemes as are described in the proviso (*b*), and on certain policies taken out by teachers of secondary schools, are within the benefit of the section even if the insurances or contracts were made after 22nd June, 1916; but the rate of relief allowed is different in this case (*b*).

Relief in respect of life assurance premiums is not taken into account in calculating the amount of relief in respect of Dominion income-tax (*d*).

Life Insurance, etc.: Extent of Relief.

Subject to certain specific restrictions, the rates of allowance are calculated as follows upon the premium paid or the sum paid or deducted, as the case may be:—

In the case of an insurance or contract made on or before 22nd June, 1916 (*e*), tax at half the full rate (*f*) charged for the year where the total income from all sources does not exceed 1,000*l.*, at three-quarters of the full rate where it exceeds 1,000*l.* but does not exceed 2,000*l.*, and at the full rate where it exceeds 2,000*l.* (*g*);

(*z*) See note (*ρ*) on p. 18.

(*a*) Act of 1918, s. 32 (3) (e) (ii), (iii).

(*b*) Sect. 32 (3) (e), proviso.

(*d*) Finance Act, 1920, s. 27 (8) (d), *infra*, p. 476.

(*e*) The limitation in question was first enacted in sect. 36 of the Finance Act, 1916.

(*f*) *Vide supra*, p. 13.

(*g*) Act of 1918, s. 32 (1) (a) (d), as amended by Finance Act, 1920, s. 26, read with definition of "standard rate of tax" in sect. 33. Where the full rate is 6*s.* in the £, the appropriate rates for calculating relief in the cases stated are 3*s.*, 4*s.* 6*d.*, 6*s.* and 3*s.*, respectively.

the allowance may be increased to a certain extent where the total income is so close to 1,000*l.* or 2,000*l.* as to cause hardship (*h*). In the case of an insurance or contract made after 22nd June, 1919 (*i*), whatever the amount of the total income, the allowance is at half the full rate (*j*). The relief to individuals not resident in the United Kingdom is limited in the same way as are allowances and deductions (*k*).

The amounts to which the appropriate rates of allowance are to be applied are restricted as follows: These amounts must not exceed one-sixth (*l*) of the total income from all sources (*m*); in respect of any premium or other payment (*n*) payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not) the amount must not exceed seven per cent. of the capital sum payable on death, and bonuses, premiums returnable and other benefits and sums payable in any other contingency are to be excluded (*o*); in respect of premiums or payments to which the section applies and which are payable for securing any benefits in which a capital sum payable on death is not included (*p*), the amount on which the allowance is calculated must not exceed 100*l.* Apparently, relief is to be given in respect

(*h*) Sect. 32 (9), inserted by Finance Act, 1920, s. 26 (7).

(*i*) See note (*e*), p. 20.

(*j*) See note (*g*), p. 20.

(*k*) Finance Act, 1920, s. 24 (1), proviso; *vide supra*, p. 11.

(*l*) Act of 1918, s. 32 (3) (a), as amended by Finance Act, 1920, Third Schedule.

(*m*) As to the meaning of this phrase, *vide infra*, p. 22; "in any year of assessment during which the present war continues," the total income is to be taken as that for the year ending 5th April, 1914, if that is greater than the total income for the year of assessment: Act of 1918, s. 45, *infra*, p. 356.

(*n*) The words "or other payment" seem to be superfluous: see *Turton* v. *O'Brien*, *supra*, p. 18, note (*p*).

(*o*) Act of 1918, s. 32 (3) (c). This provision was first enacted in sect. 17 of the Finance Act, 1915, apparently to modify the effect of the decision in *Gould* v. *Curtis*, [1913] 3 K. B. 84, *supra*, p. 18, where 200*l.* was payable if the assured should survive to a certain date, and only 100*l.* if he died earlier. Under the law as it now stands the allowance would in such a case be calculated at the appropriate rate on seven per cent. of 100*l.*

(*p*) This appears to be the effect intended by sect. 32 (3) (d) of the Act of 1918 (which also first appears in sect. 17 of the Act of 1915); but if construed according to strict grammar the paragraph is meaningless.

of war insurance premiums (as defined) even though these limits are exceeded (*p*).

Life Insurance, etc.: Method of obtaining Relief.

The relief allowed by sect. 32 entitles the person in question to have the tax payable by him reduced by a sum representing tax calculated as has been indicated above (*q*). If, however, he has paid the tax without such reduction or has been charged with tax by deduction or otherwise, he is entitled to repayment (calculated in the same way), on a claim being made to the special commissioners, and on production of the receipt for his insurance premium or similar payment and proof of the facts to their satisfaction (*r*). Where the insurance is effected with a registered friendly society (*s*) and the premiums are made payable for shorter periods than three months, a certificate signed by an officer of the society showing the amount of premiums paid during the year must be produced; penalties are provided for giving or producing a false certificate (*t*).

Total Income.

For the purpose of ascertaining his taxable income (*u*) an individual is entitled, as already stated, to have certain deductions made from his assessable income (*x*). He cannot have these deductions made unless he has claimed them by means of a return in the prescribed form of his total income (*y*). For this purpose, therefore, it becomes necessary to see what is meant by "total income." The same question is also of importance for the purpose of super-tax, which is assessed upon the total income from all sources "estimated in the same manner as" it "is

(*p*) Sect. 32 (5), (6); cf. last note.
(*q*) Act of 1918, s. 32 (1), as amended by Finance Act, 1920, s. 26.
(*r*) Sect. 32 (2), as amended by Finance Act, 1920, Third Schedule.
(*s*) *Vide infra*, p. 271.
(*t*) Sect. 32 (7).
(*u*) *Vide supra*, p. 13.
(*x*) *Vide supra*, p. 12.
(*y*) Finance Act, 1920, s. 17 (1), *infra*, p. 469.

required to be estimated in a return made in connection with any claim for a deduction from assessable income" (*z*). And the relief in respect of life assurance premiums and similar payments is limited to one-sixth of the "total income from all sources estimated in accordance with the provisions of the Income Tax Acts" (*a*).

Those Acts, however, contain no general direction as to how the "total income" or the "total income from all sources" of an individual is to be estimated or made up. The practice is no doubt well understood, but the statutory enactments go no further than to prescribe the contents of the return that is "to be delivered in order to obtain any allowance or deduction" (*b*), and do not say how those materials are to be treated.

The following passage affords a connected account of the statutory enactments and of the practice, which was confirmed by the Courts in the case from which the extract is taken (*c*):

"Section [27 of the Income Tax Act, 1918] then provides for the mode of claiming [any allowance or deduction]. The claimant is to deliver in the [prescribed form (which refers to sect. 207 and Fifth Schedule, No. XVII.)] a declaration setting forth the sources of his income and the receipts from each source, "and also (1) [all particulars of any yearly] interest or other annual payments, reserved or charged thereon, whereby

(*z*) Act of 1918, s. 5 (1), *infra*, p. 339, as amended by Finance Act, 1920, Third Schedule.

(*a*) Act of 1918, s. 32 (3) (a), as amended, *infra*, p. 348. It is difficult to see why the same language was not used in amending this provision as in amending sect. 5 (1), or that the meaning of the phrases used is in any way different.

(*b*) Act of 1918, s. 27 (1), *infra*, p. 345, and Fifth Sched. No. XVII., as amended by Finance Act, 1920, Third Sched. What are in these enactments called "Lists, declarations and statements" are called "returns" in sect. 5 (1) of the Act of 1918, and in sect. 27 (1) of the Finance Act, 1920. The procedure for making claims is dealt with, *infra*, p. 345.

(*c*) *Earl Howe* v. *Inland Revenue*, [1919] 2 K. B. 336, per SCRUTTON, L.J., at pp. 351, 352. The case arose under the Act of 1842; but the enactments now in force are unchanged except for some verbal alterations and some rearrangement; and the passage quoted is so valuable as an exposition of the law at the present day, that the writer has ventured to insert in it references to and quotations from the Acts in their current form.

[his] income [is] or may be diminished": and also (2) [all particulars of sums which he has charged or] may be entitled to charge [on account of tax] against any other person; or (3) [which he has deducted, or may be entitled to deduct, out of any payment to which he is or may be liable]. Heads (2) and (3) refer to the amounts of tax which under [sect. 17] he cannot recover because he can deduct it from another person. The reason for head (1) is not expressly stated, but I think it must mean the provision of means of calculating deductions from income to obtain [any allowance or deduction] and must involve an authority to deduct those sums from the total income to get the income for the purpose of [any allowance or deduction]. . . . When one seeks further light from the 'form' prescribed in [sect. 207, Fifth Schedule, No. XVII.] the first and second heads give the total amount of income for which the claimant is either (1) assessed or (2) has to allow deduction of duty by others who are assessed; (3) is the amounts he can deduct from the total of (1) and (2); (4) gives the sum arrived at by deducting head (3) from the heads (1) and (2). Head (5) is apparently to inform the revenue as to other persons who have income from which tax is deducted at the source."

Total income, or "total income from all sources," may therefore be defined as the sum(*d*) of the amounts for which the individual is assessed, and for which he has to allow deduction of tax by others who are assessed or who have themselves to allow such a deduction, *less* the amount of any interest, annuities or other annual payments which are to be paid out of the property or profits or gains assessed on the individual, and upon which the individual can deduct the tax against the recipient(*e*). Life assurance premiums, for instance, cannot be deducted.

(*d*) See Fifth Sched. No. XVII. Fourth Head.

(*e*) *Earl Howe* v. *I. R.*, *supra*; *Stocker* v. *I. R.*, [1919] 2 K. B. 702. These cases arose with regard to super-tax, and the actual decisions are summarized, *infra*, p. 282. The provisions as to deduction of tax against others by the person assessed are discussed, *infra*, pp. 55, 181, &c.

"It certainly means more than income properly so described—it includes more than 'profits and gains' chargeable under the last three schedules. . . . It includes the annual value of property chargeable under Schedule A, and the annual value of the occupation chargeable under Schedule E. The Income Tax Code (*f*) contains express directions for estimating and calculating these values for the purpose of ascertaining the title to abatement when relief by way of abatement is claimed. But it contains no directions for estimating or bringing into account any benefit or advantage or enjoyment derived from lands . . . . which does not come under Schedule A or Schedule B" (*g*).

It is thus immaterial whether the amounts in question (charged directly or by way of deduction) are assessable under Schedule A, B, C, D or E, so long as they are assessable under one or the other (*h*); the whole of the income assessed under any of them is to be brought into the calculation. The income from the ownership of lands is represented by the annual value estimated under Schedule A (*i*); the income from the occupation of lands is represented by the "assessable value" estimated under Schedule B (*k*) subject to any allowance, deduction or relief granted under the Act of 1918; an owner-occupier of land has to bring in both amounts (*l*). An individual who is a coparcener, a joint tenant, or a tenant in common, of the profits of any property brings in to his total income such part of the amount assessed as is proportionate to his share and interest; so also does an individual who is a tenant of lands or tenements in partnership, where the partners are in actual joint occupation and are entitled to the profits in shares (*m*). In the case of a partnership

(*f*) See now Act of 1918, s. 19, *infra*, p. 343.
(*g*) *Tennant* v. *Smith*, [1892] A. C. 150, per Lord MACNAGHTEN at p. 161.
(*h*) Sect. 1, *infra*, p. 339.
(*i*) See Chap. II.
(*k*) See Chap. IV.
(*l*) Sect. 19, *infra*, p. 343.
(*m*) Sect. 20: see proviso (i) thereto, *infra*, p. 344.

carrying on a trade, profession or vocation, the individual partner's income for the purposes of total income is deemed to be the share in the partnership profits to which he is entitled during the year in question (*n*). It is not the actual profits of the partnership that are here referred to, but the profits estimated for income tax purposes on the three years' average, or otherwise, as the case may be (*o*).

Wounds and disability pensions and war gratuities are exempt from tax and are not to be included in total income (*p*).

The privilege accorded to a bank manager of living in a dwelling-house (in which he is obliged to live) attached to the bank is not convertible into money or money's worth, and is not assessable under any schedule; the value of that privilege therefore does not form part of his total income (*q*); neither does the annual value of a manse occupied by a minister of the Free Church of Scotland who is bound to occupy it personally form part of his total income (*r*); but the case of a minister of the Established Church of Scotland is different, because he can let his manse, and convert into money the value of his privilege of residing there (*s*).

The profits of a trade cannot be included in an individual's total income unless the trade is wholly or partly the property of that individual (*t*).

Annual payments based on a percentage of gross receipts from sales of patent machines are included in the total income of the payee, though they form part of the consideration for the sale of his interest in the patent (*u*).

Where dividends are paid free of tax the income tax

(*n*) Sect. 20, proviso (ii).
(*o*) *Gaunt* v. *I. R.*, [1913] 3 K. B. 395, *infra*, p. 26.
(*p*) Finance Act, 1919, s. 16 (1), s. 17 (1), *infra*, pp. 463, 464.
(*q*) *Tennant* v. *Smith*, [1892] A. C. 150, *supra*.
(*r*) *M'Dougall* v. *Sutherland* (1894), 21 R. 753; 3 Tax C. 261, *infra*, p. 236.
(*s*) *Corke* v. *Fry* (1895), 22 R. 422; 3 Tax C. 335, *infra*, p. 236.
(*t*) *Walker* v. *Reith* (1906), 8 F. 381, *infra*, p. 132.
(*u*) *Jones* v. *I. R.*, [1920] 1 K. B. 711, *infra*, p. 284.

thereon must be included (*x*); the value of bonus shares distributed does not form part of total income (*y*).

Interest on War Loan securities issued free of income tax (but not free of super-tax) is to be brought in to "total income," together with the tax on such interest at the highest current rate (*z*).

An assessment that has become final and conclusive for the purposes of tax cannot be reopened for the purpose of estimating the total income (*a*); and no allowance or adjustment can be made for this purpose on the ground of diminution of income or loss; such an allowance or adjustment can only be made in estimating total income if it has previously been made on an application with regard to a particular source or sources of income (*b*).

Weekly wage-earners employed by way of manual labour are in respect of the wages arising from that employment assessed quarterly on the actual amount of wages in that quarter (*c*); their total income in respect of such wages is represented by the total wages on which the tax is thus charged in the year (*d*).

Actual Income falling short of Assessed Income.

A temporary provision (*e*) is made for relief in the case of an individual whose actual income from all sources has

(*x*) *Samuel* v. *I. R.*, [1918] 2 K. B. 553, *infra*, p. 283; the tax should probably be calculated at the full rate charged for the year. As to Dominion tax, *vide infra*, p. 28.

(*y*) *I. R.* v. *Blott*, [1920] 2 K. B. 657, *infra*, p. 283.

(*z*) Act of 1918, s. 48 (2), *infra*, p. 358. The highest current rate means, since the passing of the Finance Act, 1920, the full rate charged for the year. The provision referred to in the text is somewhat mitigated as regards converted Government securities by Finance Act, 1919, s. 25, and Finance Act, 1920, s. 30, *infra*, pp. 465, 477.

(*a*) Income Tax Act, 1918, s. 18, *infra*, p. 343. As to super-tax, *vide infra*, p. 280.

(*b*) The purposes for which such application may be made and the procedure are indicated *infra*, p. 323.

(*c*) Sched. D, Cases I. and II. r. 2, *infra*, p. 433.

(*d*) Sect. 22, *infra*, p. 344.

(*e*) Income Tax Act, 1918, s. 44, *infra*, p. 356: continued in force for the year ending 5th April, 1921, by the operation of Act of 1919, s. 15, and Act of 1920, s. 14 (2), *infra*, pp. 463, 467.

fallen short by more than ten per cent. of the income assessed and charged by way of deduction or otherwise. Such an individual is entitled to repayment of the difference between the tax paid (directly or by way of deduction) and the tax that would have been assessed on his actual income. While both provisions are continued in force, there appears to be no reason why such an individual, if he is assessed under Schedule D, should not also obtain the relief to which he is entitled under sect. 43 (*f*) by reason of a diminution of profits due to the War.

Application for this relief must apparently be made in the same way as for any other repayment (*g*).

Dominion Income Tax.

Provisions intended to relieve a person from having to pay upon any part of his income the full income tax (and super-tax) chargeable in the United Kingdom as well as the full income tax and super-tax chargeable in a "Dominion" are contained in the Finance Act, 1920 (*h*). They are designed to cover cases where a reciprocal arrangement has already been made with a Dominion, as well as those where such an arrangement has not yet been made, but may be made in the future; it is apparently for this reason that while a general standard of relief from United Kingdom tax is provided at the outset, a provision still more favourable to the taxpayer as regards the United Kingdom tax is also enacted, to apply to cases where the Dominion as yet gives no relief.

These provisions are not confined to self-governing colonies; the word "Dominion" means any British possession or protectorate or any territory for which any Government in the Empire exercises a mandate (*i*); and "Dominion income tax" means "any income tax or super-tax charged . . . . in any Dominion, if that tax

(*f*) *Vide infra*, p. 171.
(*g*) *Vide infra*, p. 323.
(*h*) Act of 1920, s. 27, *infra*, p. 474.
(*i*) Sect. 27 (8) (a), *infra*, p. 476.

appears to the Special Commissioners to correspond with United Kingdom income tax or super-tax" (*j*).

This relief is not confined to individuals (*k*), but is open to companies and other bodies; and where these obtain the relief, they are bound in distributing dividends to hand on the benefit to the shareholders; that is to say, they may not deduct income tax at a rate exceeding that of the United Kingdom tax as reduced by this relief (*l*). But if the result of this operation is that the individual has obtained relief at a higher rate than would have been the case if he had himself been charged with tax and claimed relief, the income tax authorities may adjust the matter (*m*) in connection with the relief with regard to the first 225*l*. of the taxable income (*n*).

No relief is granted unless the Dominion income tax has been actually paid, by deduction or otherwise; it is not enough that the tax is payable. The Commissioners of Inland Revenue are to prescribe by regulation what year is to be taken for the Dominion income tax as corresponding to the United Kingdom year of assessment (*o*).

The relief ascertained according to the general standard is given by way of diminution of the income tax charged, or if the claim has not been established before 1st January in the year to which it relates (that being the day when income tax first becomes due (*p*)) by way of repayment (*q*). In either case the whole amount of reduction or repayment is allowed against income tax, even though the relief is based in part on payment of, or liability to, Dominion super-tax.

(*j*) Sect. 27 (8) (c), *infra*, p. 476.

(*k*) See Act of 1918, General Rules, r. 1; and contrast with sect. 27 of the Act of 1920, ss. 16, 17, 23, 24 of the Act of 1918.

(*l*) Act of 1920, s. 27 (5), *infra*, p. 475. *Scottish Union, &c.* v. *New Zealand, &c. Land Co.*, [1921] 1 A. C. 172, arose under the Finance Act, 1916, and is no longer applicable. As to deduction of tax generally from dividends, *vide infra*, p. 244.

(*m*) Sect. 27 (3). This sub-section perhaps covers other special cases also.

(*n*) Given by sect. 23: *vide supra*, p. 13.

(*o*) Sect. 27 (7) (b).

(*p*) *Vide infra*, p. 326.

(*q*) Sect. 27 (2).

As relief is in general to be thus obtained, it follows that it cannot also be given by way of excluding from the income estimated for the purpose of United Kingdom tax the amount of Dominion income tax that has been paid or borne; and the inclusion of that amount is provided for (*r*). But this is not so as regards the additional relief obtainable where there is no reciprocal arrangement with the Dominion (*s*).

Dominion Tax: Calculation of Amount of Relief.

In general, the relief given is at the rate of one-half the "appropriate rate of" United Kingdom income tax and super-tax, unless where the Dominion rate is less than that rate, in which case the rate of relief is the Dominion rate (*t*). Thus, if the United Kingdom appropriate rate is 6*s.* 6*d.* in the £, and the Dominion tax 3*s.* 6*d.*, the rate of relief will be 3*s.* 3*d.*; if, however, the Dominion tax is 2*s.*, the rate of relief will be 2*s.* only. The "appropriate rate" of United Kingdom tax and the "Dominion rate" are both calculated by dividing the amount of tax payable in the United Kingdom or paid in the Dominion as the case may be, by the amount of the income on which it is charged (*u*); the tax payable in the United Kingdom is ascertained without deducting any relief granted in respect of life assurance premiums (*x*) or granted under this section. Where the Dominion tax is charged on an amount other than ascertained actual profits, it is left to the Special Commissioners to determine the Dominion rate for the purposes of this section.

The rate of relief thus calculated is applied to any part of the income in respect of which Dominion income tax

(*r*) Sect. 27 (4), discussed *infra*, p. 474.

(*s*) *Vide infra*, p. 31.

(*t*) Sect. 27 (1).

(*u*) Sect. 27 (8) (d). This provision avoids the difficulties that would otherwise be produced by graduations of tax and by abatements and deductions, *e.g.*, in ex. (10) on p. 14 the tax is 168*l.* 15*s.* and the income 1,000*l.*; the appropriate U. K. rate is 3*s.* 4½*d.* in the £.

(*x*) *Vide supra*, p. 18. Any relief granted under sect. 32 (2) in respect of payment or deduction of a sum under an Act of Parliament or under the terms of employment may apparently be deducted.

has been paid for the same year; and the result is the amount of the relief to which the person is entitled (*y*).

By the phrases "any part of his income" and "the same part of his income," it is apparently not intended to restrict the relief so that it should always be calculated on the same amount as that on which the Dominion tax has been paid (*z*). The taxable profit may be arrived at upon different methods in the two countries; and what appears to be intended is that the income derived from a source, the income from which has paid Dominion tax in the year, shall afford a ground for relief although the income from that source may be estimated at a larger sum for United Kingdom tax than for Dominion tax. Thus, if that income is estimated for Dominion tax at 600*l.* and for United Kingdom tax at 1,000*l.* and the Dominion tax is 1*s.* 6*d.*, the relief will be 1*s.* 6*d.* on 1,000*l.*; if it is estimated for Dominion tax at 900*l.* and for United Kingdom tax on 300*l.*, the relief will be 1*s.* 6*d.* on 300*l.*

Additional relief where there is no reciprocal arrangement.

In the Report of the Royal Commission (*a*) it was recommended that the relief given by the United Kingdom should not exceed half the rate of the United Kingdom tax, and that any further relief necessary in order to confer relief amounting in all to the lower of the two taxes should be given by the Dominion. What has been called above the general standard of relief is set up on the assumption of such reciprocity. But where the laws in force in any Dominion make no provision for the allowance of relief in respect of United Kingdom tax, an additional relief is given in this country (*b*). The difference between the amount of the Dominion income tax paid or payable and the total amount of the relief granted from

(*y*) Finance Act, 1920, s. 27 (1).
(*z*) See Report of Royal Commission, paras. 74, 75.
(*a*) Para. 70.
(*b*) Sect. 27 (4), proviso (b).

United Kingdom tax in accordance with the general standard is deducted in estimating the income for the purpose of the United Kingdom tax; the period taken for the purpose of ascertaining the total amount granted is of course the same period as that on the income of which the assessment to United Kingdom tax is computed (*c*). Note that here the income to be charged is itself reduced and not merely the amount of tax leviable on that income: and further, that the amount to be deducted is the difference between Dominion income tax and United Kingdom relief, and not the amount of income on which the Dominion tax is charged.

(*c*) *E.g.*, where the income of a trade is computed on an average of three years, the total amount of relief will be computed on an average of three years.

CHAPTER II.

LANDLORD'S PROPERTY TAX: SCHEDULE A., NOS. I. AND II.

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Tax charged under Schedule A.

THE income tax is charged under Schedule A "in respect of the property in all lands, tenements, hereditaments and heritages in the United Kingdom for every twenty shillings of the annual value thereof." The lands, &c. are divided into three main classes by the General Rule No. I. and the rules grouped under Nos. II. and III.; the general class includes all kinds of landed property, except certain matters issuing out of land (such as tithes and manorial dues) which are assessed according to the rules grouped under No. II., and except certain properties which are of the nature of business concerns, such as quarries, mines, gasworks, canals, railways; these are assessed according to the rules grouped under No. III. The term "landlord's property tax" is usually applied to the tax assessed under the General Rule No. I. of the Schedule A, because, as will be seen (*a*), the tax or the major part of it is ultimately

(*a*) *Vide* pp. 55 *sqq.*; and see *R.* v. *Goodchild* (1857), 27 L. J. M. C. 233, per COLERIDGE, J., at p. 242.

borne by the landlord, even though the property may be occupied by a tenant who pays the tax in the first instance.

Where a trade is carried on upon the premises in respect of which income tax is payable under Schedule A, a further assessment is made under Schedule D in respect of the profits of such trade (*b*); in computing those profits, allowance is made for the annual value of the premises (*c*).

General Rule.

The following is the general rule referred to:—"In the case of all lands, tenements, hereditaments or heritages capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value (except the properties mentioned in No. II. and No. III. of this Schedule), the annual value shall be understood to be:—

"(1) The amount of the rent by the year at which they are let, if they are let at rack-rent and the amount of that rent has been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; or

"(2) If they are not let at a rack-rent so fixed, then the rack-rent at which they are worth to be let by the year."

Within the Administrative County of London the valuation list in force under the Valuation (Metropolis) Act, 1869, is conclusive for the purposes of income tax; and this rule accordingly does not apply to lands included in that list (*d*).

There is no general direction as to the unit of lands, &c. that is to be taken for assessment purposes. But it seems clear that any lands, &c. to be assessed as a unit must

(*b*) *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624, *infra*, p. 104; *Coman* v. *Rotunda Hospital Governors*, [1921] 1 A. C. 1, *infra*, p. 109.

(*c*) *Vide infra*, p. 147.

(*d*) The relevant provisions of that Act are dealt with, *infra*, p. 48.

form a single property and be in a single occupation (*e*), although the property may be that of joint owners or the occupation that of joint occupiers. The specific direction for separate assessments in the case of a house "divided into distinct properties" distinctly occupied, like many other of the rules in Schedule A, is merely an obvious application of this unexpressed principle (*f*).

Actual Occupation.

In order to be assessable under the General Rule the property must be "capable of actual occupation"; and occupation for this purpose has the same meaning as for purposes of poor rate (*g*). Thus, a sewer provided by a local authority in the discharge of its public duties and without any possibility of profit is assessable under the General Rule (*h*); and the principle would doubtless be applied to any other municipal undertaking of which the same could be said. Tithe commutation rentcharge is taxable under the General Rule, though it can scarcely be said to be capable of actual occupation (*i*).

Where minerals have not yet been won, although included in a mining lease, the lessees are not the occupiers of the minerals (*k*); and it may be doubted whether unwon minerals can be said to be "capable of actual occupation."

(*e*) Except in the case of a "house or building let in different apartments or tenements" severally occupied, which is to be assessed as a whole: Sched. A, No. VII. r. 8 (c), *infra*, p. 420.

(*f*) No. VII. r. 12, *infra*, p. 421.

(*g*) *Coomber* v. *Berks JJ.* (1883), 9 A. C. 61; and the case next cited.

(*h*) *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1906] 1 K. B. 294; [1907] 1 K. B. 490; [1907] A. C. 264, *infra*, pp. 39, 80. The Court of Appeal and House of Lords held the case to be concluded by the poor-rate decisions in *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Newport Assessment Committee*, [1901] 1 K. B. 406; and *London County Council* v. *Erith Churchwardens*, [1893] A. C. 562. Those decisions applied to overground sewers only; but underground sewers have since been held rateable in *West Kent Main Sewerage Board* v. *Dartford Union*, [1911] A. C. 171.

(*i*) *Stevens* v. *Bishop* (1887), 19 Q. B. D. 442, per A. L. SMITH, J., at p. 444; 20 Q. B. D. 442, per ESHER, M.R., at p. 447, *infra*, p. 62. As to other forms of commuted tithe, &c., *vide infra*, p. 62.

(*k*) *Hill* v. *Gregory*, [1912] 2 K. B. 61, *infra*, p. 49.

Occupation by the Crown or for Crown purposes.

The Crown is not liable to income tax, and consequently no income tax is leviable under Schedule A or otherwise in respect of buildings used for the purposes of the general administration of the country, even though they be provided by county or other authorities and not by the State at large.

In the leading case upon the subject(*l*) Lord BLACKBURN quoted, as laying down "the general principle as to the construction of statutes imposing charges as containing an exemption of the Crown," the words of Lord KENYON in *R.* v. *Cook*(*m*):—

"'Now, although there is no special exemption of the king in this Act of Parliament (25 Geo. 3, c. 51), yet I am of opinion that he is exempted by virtue of his prerogative in the same manner as he is virtually exempted from the 43 Eliz.(*n*) and every other Act imposing a duty or tax on the subjects.' There may well be [Lord BLACKBURN continues] expressions in an Act imposing a duty or tax on the subject such as to shew that the intention of the legislature was to impose the duty on some property belonging to the Crown. But I do not think it made out that there is any such intention shewn in the Income Tax Act. [His Lordship then quotes the opening words of the General Rule(*o*).] But I do not think this can be construed as taking away the exemption, by virtue of the prerogative, of property actually occupied or enjoyed by the Crown. . . . . I do not think it can be disputed that the administration of justice, both criminal and civil, and the preservation of order and prevention of crime by means of what is now called police, are among the most important functions of Government, nor that by the constitution of this country these functions do, of common right, belong to the Crown."

(*l*) *Coomber* v. *Berks JJ.* (1883), 9 A. C. 61, at pp. 65—67. See also *Tunnicliffe* v. *Birkdale Overseers* (1888), 20 Q. B. D. 450.

(*m*) *R.* v. *Cook* (1790), 3 T. R. 519.

(*n*) 43 Eliz. c. 2 (Poor Relief Act, 1601).

(*o*) Set out *supra*, p. 34.

Lord WATSON says, in the same case (*p*), "The exemption of the Crown . . . . takes effect in all cases when the Crown is not named in the statute, or, I should prefer to say, in all cases where the enactments do not take away the privilege, either in express terms or by plain and necessary implication. There is not, in my opinion, one kind of Crown exemption from the Statute of Elizabeth and another kind of Crown exemption from the Income Tax Acts. In other words, it appears to me that the existence of the same kind and degree of interest, on the part of the Crown, which is deemed in law sufficient to protect an occupier from liability to the poor-rate, must also be held sufficient to shield the owner of the bare legal estate against any demand for the payment of income tax. . . . . I therefore think that the cases in which it has been decided that the actual occupiers of assize courts are exempt from poor-rate, as being within the privilege of the Crown, are decisions of equal authority in a question as to exemption from income tax."

It will be seen from this decision that the numerous poor-rate cases (*q*) upon this matter are conclusive also as to income tax. The actual hereditament with which that case was concerned consisted of assize courts and a county police station (with accommodation for constables as well as prisoners) provided by county justices out of county rates (*r*). In an earlier case, a dwelling-house so provided in which a police constable was compelled by the terms of his appointment to live and which communicated with a police station, was held not to give rise to the liability to income tax (*s*).

On the other hand it has been held that the exemption does not extend to municipal buildings (except such part of them as is used for a burgh court), baths, and a weights

(*p*) 9 A. C. at pp. 76, 77.

(*q*) See Ryde on Rating.

(*r*) *Coomber* v. *Berks JJ.* (1883), 9 A. C. 61. A Scottish decision to the contrary effect with regard to county police stations (*Clerk* v. *Dumfries Commissioners of Supply* (1880), 7 R. 1157; 1 Tax C. 281) was disapproved.

(*s*) *Bent* v. *Roberts* (1877), 1 Tax C. 199.

and measures office (*t*), and that where a part of such buildings was used only exceptionally and accidentally for the purposes of a Court of Justice, that part was not exempt (*u*). Income tax is payable in respect of a county lunatic asylum, because provision for the custody and maintenance of pauper lunatics is not the exercise of a prerogative of the Crown, nor the discharge of a duty which appertains to the public government of the county (*x*).

A specific rule imposes on officers of the Crown who are paid in part by the privilege of occupying a house, tenement or apartment belonging to the Crown (other than apartments in royal palaces) the liability to income tax on the annual value thereof (*y*).

What Property is excepted from the General Rule by Rules under No. III.?

There are certain classes of property which appear to fall on the border line of the exceptions to the General Rule made by the rules grouped under No. III. (*z*); but it is now well settled law that the latter rules are confined to property of the classes enumerated in rules 1, 2 and 3 of the group, and to property *ejusdem generis* with that specifically designated in rule 3, provided that the property is a "concern" carried on for the purposes of actual profit. As Lord McLaren said in *Harris* v. *Edinburgh Corporation* (*a*), "the principle is reasonably clear, and it is that in the case of ironworks and the other works enumerated, which are carried on with a view to profit, it is impossible, or at least extremely difficult, to separate the profit derived from the use of the land from the profit derived from the mercantile undertaking carried on by means of the land or its produce, and therefore, the two things are massed together and are assessed as a going

(*t*) *Adam* v. *Maughan* (1889), 27 S. L. R. 64; 2 Tax C. 541.
(*u*) *Brown* v. *Smith* (1901), 4 F. 31; 4 Tax C. 435.
(*x*) *Bray* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484.
(*y*) Sched. A, No. VII. r. 11. See per Lord Blackburn in *Coomber* v. *Berks JJ.*, 9 A. C. at p. 66; and contrast *Tennant* v. *Smith, supra*, p. 15.
(*z*) See Chap. III.
(*a*) [1907] S. C. 1233; 5 Tax C. 271, at p. 277.

concern." Upon this principle it has been held that a sewer vested in a local authority was taxable under the General Rule and not under rule 3 of No. III., although the owning authority received payments from other local authorities for a partial use of the sewer; WALTON J. pointed out that if they had made any profit out of their payments the case might have been different (*b*). Where profits are made, the existence of a statutory provision regulating their disposal will not take the property out of the scope of No. III. (*c*); but if the gross receipts themselves are so limited by statute that there can be no balance of profit the property is not a "concern," and is assessable under the General Rule. Consequently, a municipal slaughter-house where the dues were, in accordance with the local Act, so limited as to produce no surplus above the current expenses together with the interest on the cost of construction, was held to fall within the General Rule, and not within No. III. (*d*). The provisions of the local Act may therefore in any case of a municipal or public undertaking have to be carefully examined in order to see whether their true effect is to limit the profits receivable, or to restrict their application when received.

Brickfields are not mentioned in rule 1 of No. III., and are not of a like nature with any of the properties enumerated in rule 3; they are therefore assessable under the General Rule (*e*). Quarries are specified in rule 1, but nevertheless it has been said that "a quarry of stone worked by a landowner on his own estate for the purposes of his own estate would clearly come under Rule No. I., and it would not in my view come within No. III. because no

(*b*) *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1906] 1 K. B. 294, at p. 309; [1907] 1 K. B. 490; [1907] A. C. 264, *supra*, p. 35.

(*c*) *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 891, *infra*, p. 80; cf. *Port of London Authority* v. *Orsett Union*, [1920] A. C. 273.

(*d*) *Harris* v. *Edinburgh Corporation* (1907), S. C. 1233; 5 Tax C. 271, per Lord MCLAREN; *vide supra*, "Occupation by the Crown or for Crown purposes," and *infra*, p. 68.

(*e*) *Edmonds* v. *Eastwood* (1858), 27 L. J. Exch. 209; *supra*, p. 34. This point was not definitely decided in that case; but the judgments would make it very difficult to argue the contrary.

profits were received from it; it would not be a concern which the landowner was carrying on; it is not a case in which any person having the management of it could be said to be in receipt of the profits thereof" (*f*). This was *obiter dictum;* and it may be pointed out (first) that although rule 1 of No. III. provides that in the case of quarries of stone the annual value shall be understood to be the profits of the preceding year it contains no reference to "concerns" such as appears in rule 3; and secondly, that even if the landowner supposed takes no profits in money from his quarry he certainly receives profit in money's worth. In view of these considerations it appears quite possible that if any such quarry as is described in rule 1 is so worked that its produce is not actually sold it may nevertheless be held to be assessable under No. III., and its occupier may receive the benefit of deductions which would not be admissible under the General Rule No. I.

Annual Value.

The effect of the General Rule No. I. on the assessment of property included in its purview is that in respect of landed property generally (with the exceptions above indicated) income tax is charged upon its annual value. The phrase "annual value," whether in income tax Acts, poor rate Acts, succession duty Acts, or wherever else it appears in connection with rating or taxation, means the same thing, that is, a rack-rent (*g*) or the rent which a tenant can afford to give after retaining out of the value of the gross produce of the land sufficient to afford him a profit and interest on his capital, and to enable him to pay tenant's rates and taxes. "Rack-rent is only a rent of the full value of the tenement or near it" (*h*). It has been

(*f*) *Ystradyfodwg and Pontypridd Main Sewerage Board* v. *Bensted*, [1907] 1 K. B. per COZENS-HARDY, L.J., at p. 500. True, the Revenue Act, 1866 (29 & 30 Vict. c. 36), s. 8, speaks of the whole of the properties described in No. III. as "concerns."

(*g*) In *Re Elwes* (1858), 28 L. J. Exch. 46, per WATSON, B. at pp. 47, 48.

(*h*) 2 Blackstone, 43.

described as the amount of profit derived from the property by the landlord as such (*i*); but this statement requires modification for income tax purposes, because the annual value under the General Rule is ascertained without making any deduction for repairs (*k*), insurance (*l*) or renewals. It is ascertained on the same principles as the gross estimated rental for poor rate purposes (*m*), or as the rateable value for those purposes *without* the deduction of "the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain [the property] in a state to command [the] rent" (*n*).

"Annual value is but an hypothetical sum arrived at in a certain manner" . . . It "is not an actual but an hypothetical sum" (*o*). It is, in fact, in the words of the poor rate statutes, "the rent at which the hereditament might reasonably be expected to let from year to year free of all usual tenants' rates and taxes and tithe commutation rentcharge, if any" (*p*).

Subject to the modification as to repairs, insurance and renewals, the numerous decisions upon "rateable value" for poor rate purposes are generally in point with relation to "annual value" under the General Rule of Schedule A. It is not proposed to deal in this book with those decisions, which may be more profitably studied in Ryde on Rating, but only with the cases which have been decided upon annual value for income tax purposes.

As regards sporting rights, however, the poor rate

(*i*) *Edmonds* v. *Eastwood* (1858), 27 L. J. Exch. 209, per WATSON, B., p. 214.

(*k*) Allowances for repairs are, however, made by way of reduction or repayment: *vide infra*, pp. 42—45.

(*l*) *Turner* v. *Carlton*, [1909] 1 K. B. 932.

(*m*) Defined in Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), s. 15. The poor rate assessment is not binding for income tax, see p. 45.

(*n*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 1. In *Coltness Iron Co.* v. *Black* (1881), 6 A. C. at pp. 330—334, Lord BLACKBURN traces the connection between the principles of assessment for poor rate and for income tax.

(*o*) *R.* v. *Special Commissioners of Income Tax, Ex parte Essex Hall*, [1911] 2 K. B. 434, per BUCKLEY, L.J., at p. 441; per KENNEDY, L.J., at p. 444.

(*p*) Act of 1836, s. 1; Act of 1862, s. 15. As to the exclusion of tenants' rates and taxes and tithe commutation rentcharge, &c. from annual value for income tax, see Sched. A, No. IV. rr. 1, 2 and 10. A provision putting Scottish landlords in a similar position in this respect will be found in Sched. A, No. V. r. 4.

standard is not altogether applicable; the matter is discussed in relation to Schedule B (*q*).

Drainage and Embankment Rates and Expenses: Land Tax.

Deductions are specifically allowed for drainage, fencing and embankment rates and assessments (*r*), and for expenditure privately incurred (on an average of 21 years) in the making or repairing of seawalls or embankments necessary for the protection or preservation of lands against encroachment of the sea or of tidal rivers (*s*). This provision has been construed very strictly so as to exclude any deduction with regard to embankments whose main object was to convert salt marshes into good agricultural land by excluding tidal water; the decision may perhaps be supported on the ground that the expenditure was of a capital nature, but hardly so upon the words of the rule itself (*t*). No allowance is made for any private expenditure upon embankments against non-tidal rivers, or for the maintenance of even the arterial drainage of agricultural land (*u*).

Certain drainage authorities levy rentcharges in commutation of liabilities to repair embankments or maintain drainage channels; these rentcharges are not "rates" but would probably be held to be "assessments" within the meaning of the rule first cited (*x*).

A deduction is also allowed for unredeemed land tax (*y*).

Repairs, &c.

There are two distinct rules under which an allowance is

(*q*) *Vide infra*, p. 96.

(*r*) Sched. A, No. V. r. 1 (f), *infra*, p. 415.

(*s*) No. V. r. 1 (g).

(*t*) *Hesketh* v. *Bray* (1888), 21 Q. B. D. 444, decided under Income Tax Act, 1842, s. 37.

(*u*) The whole of these deductions would be made for poor rate purposes: *R.* v. *Adames* (1832), 4 B. & Ad. 61; *R.* v. *Hall-Dare* (1864), 34 L. J. M. C. 17; but as the amount of private expenditure would there be deducted *after* ascertaining the gross estimated rental, the decision in *R.* v. *Hall-Dare* on that point does not apply to income tax, where the deductions are limited as stated in the text.

(*x*) Cf. *Green* v. *Newport Union*, [1909] A. C. 35.

(*y*) No. V. r. 1 (e). Such a deduction is not admissible for poor rate purposes: *R.* v. *Adames* (1832), 4 B. & Ad. at p. 68.

made in respect of lands charged under No. I. of Schedule A to meet the cost of repairs.

One of these rules is general, and applies to all lands so charged (*z*). The allowance is not in terms made dependent on the necessity for repairs. The assessment is directed to be reduced "for purposes of collection"; but the limitation imposed by the words quoted is more apparent than real. The effect is that the tax-payer is only liable to pay Schedule A tax on the reduced amount; the reduced amount is deemed to be his income from the property for the purpose of any allowance or deduction (*a*), and therefore for the purpose of super-tax (*b*); and a tenant occupier can only deduct against his landlord tax on the reduced amount (*c*). In estimating profits of a trade or profession under Schedule D, the deduction made for the annual value of the business premises is in general equivalent to their reduced assessment (*d*).

An owner can deduct against a mortgagee, chargee or annuitant (*e*) tax on the full amount of the assessment without taking account of this reduction (*f*).

In the case of "lands" (by which are apparently meant agricultural lands) "inclusive of the farmhouse and other buildings (if any) assessed with them," the Sched. A assessment is reduced by $\frac{1}{8}$th (*g*) unless it is already more than $\frac{1}{8}$th below the rent (*h*). In other cases, where the owner is occupier or is chargeable as landlord (*i*), or where a tenant is occupier and the landlord undertook (*j*) to bear the cost of repairs, the reduction is $\frac{1}{6}$th; where the tenant undertook (*j*) to bear the cost of repairs, it is not to exceed $\frac{1}{6}$th, but the assessment is not to be reduced below the rent

(*z*) Sched. A, No. V. r. 7, *infra*, p. 416.
(*a*) Sect. 19, *infra*, p. 343; *vide supra*, p. 11.
(*b*) *Vide infra*, p. 279.
(*c*) No. VIII. r. 1, *vide infra*, p. 419.
(*d*) Sched. D, Cases I. and II. r. 5 (2), *vide infra*, p. 436.
(*e*) *Vide infra*, p. 59.
(*f*) Sched. A, No. VIII. r. 11, *infra*, p. 423.
(*g*) No. V. r. 7 (1) (a).
(*h*) Rule 7 (2).
(*i*) *Vide infra*, p. 54.
(*j*) The grammar is that of the Act.

payable (*k*). Where the assessment is already more than $\frac{1}{6}$th below the rent, there is no reduction, whoever is the occupier (*l*).

In addition to the general reduction of assessment, the second of the rules referred to conveys relief in respect of certain classes of property, and covers other matters besides repairs (*m*). The assessment is not reduced, but repayment is allowed of excess tax paid. The repayment may be claimed in the same way as claims for any allowance or deduction (*n*); and may also be obtained by a declaration to the surveyor of taxes, if the surveyor is satisfied of its correctness (*o*). This additional relief further reduces the total income for purposes of any allowance or deduction (*p*), and therefore of super-tax (*q*). Even if this relief has been obtained, it does not apparently reduce the amount of tax deductible by an owner against a mortgagee, chargee or annuitant (*r*).

The classes of property to which this rule applies are first, "land"—that is, agricultural land—"inclusive of farmhouses and other buildings (if any)," the Schedule A assessment of which is not more than $\frac{1}{3}$th below the rent (*s*); secondly, any house the annual value of which as adopted (*t*) under Schedule A, does not exceed 105*l.* if situate in the Metropolitan Police District or the City of London, 90*l.* if situate in Scotland, or 78*l.* if situate in the rest of England or in Ireland (*u*), always provided that the assessment is not more than $\frac{1}{6}$th below the rent (*s*).

The relief is given where the cost to the owner of main-

(*k*) No. V, r. 7 (1) (b). In practice the reduction is usually made at the maximum of one-sixth.

(*l*) Rule 7 (2).

(*m*) Rule 8.

(*n*) *Vide infra*, p. 293.

(*o*) Rule 8 (5).

(*p*) Sect. 19, *infra*, p. 343.

(*q*) *Vide infra*, p. 279.

(*r*) No. VIII. r. 4 (1), second proviso, allows the owner to deduct only the tax actually paid, but is silent as to any amounts repaid.

(*s*) No. V. r. 8 (3), read with r. 7 (2).

(*t*) *Vide supra*, p. 34.

(*u*) No. V. r. 8 (3), as amended by Finance Act, 1919, s. 19, and Finance Act, 1920, s. 27, *infra*, p. 417.

tenance, repairs, insurance and management has, on an average of five years, exceeded $\frac{1}{8}$th of the Schedule A assessment of the "land," or $\frac{1}{6}$th of the Schedule A assessment of the "houses" (*x*); but any expenses otherwise allowed as a deduction for income tax purposes cannot be claimed again (*y*). The comparison between expenses and assessment may be made for the whole of the land or houses in any estate which is managed as a whole (*z*). "Maintenance" includes replacement of farmhouses, farm buildings, cottages, fences and other works, where such replacement is necessary to maintain the existing rent (*a*). The average is computed on the five years preceding the year of assessment; and years ending on March 31st are taken unless the owner with the surveyor's consent adopts another date (*b*).

Loss by Flood or Tempest.

Where land is let at a rent without fine or premium, and by reason of flood or tempest loss has been sustained on growing crops or stock on the lands, or any part of them has been rendered incapable of cultivation for any year and the owner has consequently made an abatement of rent, the general commissioners may make a corresponding reduction in the Schedule A assessment. A similar reduction may be made where the lands are in the occupation of the owner and any such loss is sustained on them (*c*). Penalties are provided in the case of fraudulent claims (*d*).

Poor Rate Assessment.

The actual assessment for poor rate purposes is not

(*x*) No. V, r. 8 (1).
(*y*) Act of 1919, s. 19, proviso. Some part of the expenses may, for instance, have been deducted in estimating income from trade: *vide infra*, p. 148.
(*z*) No. V. r. 8 (4).
(*a*) Rule 8 (2).
(*b*) Rule 8 (6).
(*c*) Rule 9 (1), (2). As to Sched. B, *vide infra*, p. 96.
(*d*) Rules 10, 11.

binding (*e*), but may be looked at, and ROWLATT J., in *Gundry* v. *Dunham* (*f*), went so far as to say that "the absolutely correct method . . . . is for the surveyor, unless he sees some reason for having a separate valuation, to take the poor law valuation. . . . The figure is not shown to be wrong merely by saying that the poor law figure was taken. *Primâ facie*, that shows it to be right." In that case, there had been a recent valuation by an expert, for poor law purposes; in other circumstances (seeing that outside the metropolis the poor law authorities are not bound to make a new valuation at any specified time) it may be doubted whether the poor law valuation can often be said to be "*primâ facie* right."

Existing Lease or Agreement not Conclusive.

Paragraph (1) of the General Rule (*g*) is in fact superfluous. The rent fixed by a recent agreement (as described in paragraph (1)) is to be taken as the annual value, if that rent is a rack-rent; if it is not, the matter is left at large by paragraph (2). The assessing authorities must therefore decide for themselves in each case whether the rent reserved is a rack-rent. Moreover, they cannot as a matter of common sense refuse to consider any existing agreement, although made before the period of seven years laid down in paragraph (1), for such an existing agreement is obviously relevant to the question what is the rack-rent at which the property is worth to be let by the year, though it may be entitled to less weight than a more recent agreement.

Existing agreements have been held not to be conclusive in a case where a mother had let a public-house to her son at a rent of 19*l.* 10*s.*, and no evidence beyond the lease was offered, but the Commissioners, availing themselves of their own personal knowledge of the property in question

(*e*) Except in the administrative county of London: *vide infra*, p. 48; and cf. *Walker* v. *Brisley; Grinter* v. *Fleming*, [1900] 2 Q. B. 735.

(*f*) (1915), 85 L. J. K. B. 417; his decision was upheld by the C. A. See also Sched. A, No. IV. r. 4.

(*g*) Set out *supra*, p. 34.

and of the value of the property in their district, fixed the annual value at 40*l.* (*h*); in a case where a brewer let a public-house to a "tied" tenant at a rent of 30*l.*, and supplied the tenant with liquors at the same price and at the same discounts as all his other customers, but a recent poor rate valuation by an expert showed a gross estimated rental of 45*l.* (*i*); and in a somewhat obvious case where the so-called "rent" included annual payments for the use of horses, coaches, and harness (*k*).

In a lease of brickfields, reserving a surface rent of 17*l.* 10*s.*, a fixed "brick rent" of 100*l.*, and an additional royalty or brick rent of 2*s.* per thousand bricks after the first million, the whole of these three kinds of rent added together were held to make up the annual value (*l*).

The rules under Schedule A contain various subsidiary directions with regard to the ascertainment of annual value of property not occupied by the owner; these rather show the way to deal with specific points that may arise than add or detract from the general principle that a rent fixed by an existing agreement is not conclusive unless it is a rack-rent (*m*). But attention may be drawn to the provision for the exclusion from annual value of any public local rates, taxes, or assessments which by law are charged upon the occupier, but which have been *bonâ fide* paid by the landlord, and of any composition for tithes so paid (*n*), and to the rule for the assessment as an entire house or tenement, of a house or building let in different apartments or tenements, and occupied by two or more persons severally (*o*).

Quinquennial re-assessment usual.

It is not usual to make a fresh assessment each year of annual values for the purposes of No. I. of Schedule A.

(*h*) *Stocks* v. *Sulley* (1899), 1 F. 1020; 4 Tax C. 98.
(*i*) *Gundry* v. *Dunham* (1915), 85 L. J. K. B. 417; *supra*, p. 46.
(*k*) *Campbell* v. *I. R.* (1879), 7 R. 82.
(*l*) *Edmonds* v. *Eastwood* (1858), 27 L. J. Exch. 209, *infra*, p. 70.
(*m*) Sched. A, No. IV. rr. 7, 8, 10, 11, 12.
(*n*) Sched. A, No. IV. r. 1 (a). Rule 10, which is somewhat obscure, should apparently be read so as not to conflict with rule 1 (a).
(*o*) Sched. A, No. VII. r. 8 (c); *vide infra*, p. 420.

Except in every fifth or sixth year, the annual Finance Act generally contains a provision such as appears in the Acts of 1919 and 1920, to the effect that the annual value of any property which has been adopted for the purpose of income tax under Schedule A or B in the past year shall be taken as the annual value for the current year (*p*), with a saving for the Administrative County of London, so that the quinquennial period thus brought about by implication outside London does not affect that which is specifically imposed within (*q*). An enactment in this form makes the annual value for the preceding year absolutely conclusive for the year to which the provision applies, and does not admit of any alteration in that value by reason of a change of circumstances (*r*); it does not prevent the making of an additional assessment for the quinquennial income tax year after the expiry of that year (*s*).

Annual Value in the Metropolis.

It has already been stated that the General Rule does not apply in the Administrative County of London where the hereditament is included in a valuation list which is conclusive for the purpose of income tax (*t*). The Valuation (Metropolis) Act, 1869, now extends to the whole of the administrative county; and provides that the valuation list for the time being in force in any parish to which that Act extends shall "be conclusive evidence of the gross value of the several hereditaments included therein" for the purpose of "any tax assessed in pursuance of the Income Tax Act, 1842, and any Acts . . . . amending

(*p*) Act of 1919, s. 14 (2), *infra*, p. 462; Act of 1920, s. 14 (3), *infra*, p. 467.

(*q*) *Infra*, p. 49.

(*r*) *Turner* v. *Carlton*, [1909] 1 K. B. 932. CHANNELL, J., was asked, but declined, in that case to hold that these income tax provisions were intended to introduce a system like that prevailing in the Metropolis, which permits some alteration during the quinquennial period. But the particular change of circumstances alleged would not have justified an alteration even under the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67). See sect. 47.

(*s*) *Gundry* v. *Dunham* (1915), 85 L. J. K. B. 417, *supra*.

(*t*) Certain subsidiary rules indicated in the opening words under "Rules applicable to Schedule A" (*infra*, p. 408) are also prevented thereby from applying in London.

the same [such as the Act of 1918], on any lands, tenements and hereditaments, in all cases where the tax is charged on the gross value and not on profits," and that in construing those Acts, "annual value shall be deemed to mean the gross value stated in such list" (*u*). The valuation list for the time being in force may be a quinquennial list, or a composite of quinquennial and supplemental or provisional lists (*x*).

Tax charged under No. I. upon the Occupier.

The property tax assessed under No. I. of Schedule A is charged (but for a few exceptional cases (*y*)) on the occupier for the time being (*z*); and "any person having the use of any lands or tenements" is deemed to be the occupier (*a*). These words do not mean that a lessee who has not actually entered but is entitled to do so and to take that use when he chooses, is deemed to be the occupier (*b*); and it appears to follow that they do not apply to an owner who does not "take that use," or who, in other words, makes no use (*c*) of the land or tenement. In spite therefore of the presence of Rule 2, the word "occupier" for the purpose of Schedule A appears to bear the same meaning as in the law of rating, just as the word "occupation" does (*d*). "Occupier" of course includes any owner who is in actual occupation; it is not the equivalent of "tenant."

Although, as will be seen (*e*), a tenant-occupier is given

(*u*) 32 & 33 Vict. c. 67, s. 45.

(*x*) Sects. 46, 47; see Ryde on Rating.

(*y*) *Vide infra,* p. 54.

(*z*) Sched. A, No. VII. r. 1, *infra,* p. 419; the charge of the tax assessed under No. II. and No. III. is specifically provided for in the rules under those numbers.

(*a*) Rule 2.

(*b*) *Hill* v. *Gregory* [1912] 2 K. B. at p. 69, *supra,* p. 35.

(*c*) But an owner who makes any kind of use of the land is an occupier, cf. *Liverpool Corpn.* v. *Chorley Union,* [1913] A. C. 197; even if that use is merely to keep the premises ready for any sudden need, cf. *R.* v. *Melladew,* [1907] 1 K. B. 192.

(*d*) *Vide supra,* p. 35; a mortgagee in possession who is in actual occupation is assessed and charged as an occupier, No. VII. r. 13 (1); but this would have been obvious without any specific provision.

(*e*) *Vide infra,* p. 55.

a right to deduct the tax paid by him against his rent, the tax is the debt of the occupier and not that of his lessor; but the payment of his debt to the Crown discharges the occupier from so much of his debt to his lessor (*f*).

A servant of the Crown in occupation of a house, tenement, or apartment belonging to the Crown, is assessable in respect thereof (*g*).

Unoccupied Lands.

There is, however, a further provision that the tax "shall be charged on all lands, tenements and hereditaments, whether occupied at the time of assessment or not," subject to the duty of the General Commissioners, in the case of any "house" which is or becomes unoccupied, upon appeal to discharge the tax in respect of the period during which the house was unoccupied (*h*). Here the words "charged on" are used with a different meaning from that of the same words in Rule 1 of No. VII.; the person is "charged" in the sense that he is commanded to pay the tax, the land only in the sense that the property in it gives rise to the liability, and that its value affords the measure of the tax to be paid (*i*).

It is submitted therefore that the effect of this rule as far as non-occupation is concerned, is merely that the Inland Revenue authorities need not enquire, before making their assessment for the year, whether any of the lands, tenements and hereditaments assessed are occupied or not. If there is no occupier in fact, there will be no one liable either to pay the tax in the first instance or to bear it by deduction; for the Act makes no person

(*f*) *Beaufort* (*Duke*) v. *I. R.*; *I. R.* v. *Anglesey* (*Marquess*), [1913] 3 K. B. 48; *Northumberland* (*Duke*) v. *I. R.*, [1920] A. C., per Lord WRENBURY at p. 834.

(*g*) *Vide supra*, p. 38.

(*h*) No. VII. r. 4.

(*i*) There appears to be no intention of creating a "charge" in the sense of real property law; contrast the language of the statute discussed in *East London Waterworks Co.* v. *Kellerman*, [1892] 2 Q. B. 72. But this rule has been held to have the result of making any goods found on the land distrainable in respect of a default in paying the tax assessed under Sched. A, *vide infra*, p. 409.

liable except the occupier (*k*); and Rule 7 of No. VIII., which authorizes deductions by a tenant occupier against his landlord for any tax which he has paid and which ought to have been paid before he entered, applies only to tax which ought to be, or to have been "paid by a former tenant or occupier" (*l*) (not being an owner) who has "ultimately" to "bear" the tax (*m*). The provision in Rule 4 as to "houses" tends at first sight to show that it was intended to impose a liability to tax in respect of unoccupied lands, tenements and hereditaments other than "houses"; but it would be unsafe to draw this deduction, for many of the specific rules of Schedule A appear to be superfluous except as illustrations of particular cases that may arise (*n*), and there is no principle on which it can be suggested that tax should be levied in respect of an unoccupied theatre or factory, but not of an unoccupied "house."

"The tax on each assessment shall be levied on the occupier for the time being, without any new assessment, notwithstanding any change of occupation" (*o*); this rule is obviously inserted for convenience of administration, and bears out the view above indicated as to the object of Rule 4.

An occupier who quits is, however, "liable for the tax payable in respect of the period up to the date of . . . quitting . . . so far as such tax falls to be ultimately borne by him" (*p*); that is, an owner-occupier liable for the whole tax for that period, and an occupier who is a

(*k*) Rule 1, *supra*, p. 49; see also r. 3, and see *Beaufort* (*Duke*) v. *I. R.*, [1913] 3 K. B. 48, *infra*, p. 56; and *Northumberland* (*Duke*) v. *I. R.*, [1920] A. C. 825, per Lord WRENBURY at p. 834.

(*l*) No. VIII. r. 7, *infra*, p. 423, takes the place of the substantive part of sect. 35 of the Act of 1853; see No. VII. r. 1, *supra*, p. 49.

(*m*) No. VII. r. 3, proviso (b), *infra*, p. 419, *vide* p. 54.

(*n*) See No. IV., *passim*, especially rr. 1, 2, 5, 7, 9, 11; No. VII. r. 7 (2), r. 12, and particularly r. 13, where it directs that a mortgagee in actual occupation shall be charged as an occupier, which, of course, he is.

(*o*) No. VII. r. 3.

(*p*) Rule 3, proviso (a); this enactment (together with General Rules, r. 22, *infra*, p. 456) takes the place of the two provisos to the Third Rule of No. IX. in sect. 63 of the Act of 1842, but it is so different in form that it may be considered as a new enactment.

tenant at a rent less than the annual value, is liable for so much of the tax as he would have no right to recover from the landlord (*q*). "Liable" in this proviso means liable to the Inland Revenue, not to the landlord or to the succeeding tenant; for the General Commissioners are to apportion the tax in case of difference, and to levy the different proportions from the proper persons (*r*).

A further proviso makes it clear that there is no authority to levy upon an occupier for the time being any tax which ought to have been levied upon and ultimately borne by a former occupier (*s*). It cannot be read so as to show (by exclusion) that a levy is authorized in every other case, *e.g.*, where there was no preceding occupier (*t*).

The enactment whose place it takes (*s*) was, however, treated as being so intended, in a case where business premises had been empty during the year of assessment and for a year or two previously, and a tenant had entered into them after the conclusion of the year; tax for the previous year was demanded from him; on his refusal a distress was levied, and was held in an action for wrongful distress to have been lawful (*u*). The hardship of the claim needs no demonstration (*x*); it is submitted that the decision was wrong (*y*) for the reasons above given, or at any rate that it has no application under the Income Tax Act, 1918.

(*q*) *Vide infra*, p. 55.

(*r*) General Rules, r. 22 (1) (b), *infra*, p. 456.

(*s*) No. VII. r. 3, proviso (b), taken (with little alteration) from the proviso to sect. 35 of the Act of 1853; its bearing is difficult to understand without its former context, which is now repeated in No. VIII. r. 7, *vide infra*, p. 54. As to the proviso with which it is now linked, see note (*p*) on p. 51.

(*t*) See the remarks as to the interpretation of the Income Tax Acts in Chap. I., *supra*, p. 5.

(*u*) *Reading* v. *Chew* (1898), 3 Tax C. 625; the case was heard at Nisi Prius and is not, therefore, of very great authority.

(*x*) It has already been shown, *supra*, p. 51, that there was no rule under which the tenant could have recovered the tax distrained for from the landlord, because the landlord had never been the occupier; and if the judgment was right, the Inland Revenue might have distrained upon the new tenant for two or three years' tax which he could not recover.

(*y*) As to distress, see Chap. XVIII.

Empty Houses.

The view has been put forward above that no tax is leviable in respect of any unoccupied lands, &c.; and reference has been made to the special provision as to houses (*z*). This provision is of importance only if that view is incorrect. "House" here probably means a dwelling-house with its appurtenances; it *may* include a warehouse or counting-house (*a*); it can scarcely include any and every kind of building (*b*). Where, then, a "house is or becomes unoccupied for part of the year, the tax shall not be levied thereon during the period while it is so unoccupied;" if this were to be read literally, and if the word "levied" were to be read in the same meaning as in Rule 3, its effect would be merely to prohibit a distraint on the house itself (*c*), any other action being clearly impossible. It is submitted that something more must be meant, namely, that there shall be no liability to the tax for the period during which the house is unoccupied.

The further words directing that the General Commissioners, on proof of that period, shall "upon appeal discharge the tax" in respect of it, are probably inserted so that an outgoer who has not been succeeded by another occupier may get his assessment reduced, and so that an incomer into an empty house may secure that no claim shall be made upon him (*d*). There is nothing to limit the time or manner in which the appeal is to be made; and the provisions with regard to appeal against assessments (*e*)

(*z*) No. VII. r. 4, *infra*, p. 419.

(*a*) In *Reading* v. *Chew*, *supra*, p. 52; r. 4 appears to have been treated as having no application to a counting-house, stores, yard and workshop; but this may have been because there had been no "appeal."

(*b*) The expressions "dwelling-house with the buildings or offices belonging thereto," "house or building let in different apartments or tenements," "lands, houses or buildings," "house or tenement," "house, tenement or apartment," "house . . . divided into distinct properties," appear in rr. 8—12; but no argument can be based on analogy or contrast between rules so vaguely worded and so loosely connected.

(*c*) *Vide infra*, p. 332.

(*d*) There may be circumstances in which it will be impossible for him to recoup any tax levied upon him for the "empty" period; see p. 51, note (*m*).

(*e*) *Infra*, p. 311.

cannot apply, for the person who desires to appeal (if he is an incomer) may have received no notice of the assessment. An incomer might also have great difficulty in proving the exact period during which the house stood empty.

Change of Occupier.

An incoming occupier (whether owner or tenant) who immediately succeeds an occupying tenant is liable for the tax due from that tenant, so far as that tenant could have recovered it from his landlord and with the same right of recovery; he is not liable for any part of the tax which that tenant could not have recovered, as for instance, if he occupied at a rent less than the annual value; nor is an incoming occupier who succeeds an owner in occupation liable for any tax due from that owner (*f*). A tenant occupier, who being required to do so, has paid tax which ought to have been paid by a former occupier (owner or tenant) may recoup himself against his landlord (*g*).

The proportions of tax due respectively from the occupier for the time being and any former occupier (including his executors, &c.) are to be fixed and levied by the General Commissioners in case of difference, and their decision is final (*h*). Where the occupation is divided after the making of the assessment, those Commissioners are also to determine the proportions due (*i*).

Landlord Charged in Certain Cases.

Where a dwelling-house with its appurtenances and the land occupied therewith is of less annual value than 10*l.* and is occupied by a tenant, where any lands and tenements are let for less than one year, and where a house

(*f*) No. VII. r. 3, and proviso (b) thereto; read with No. VIII. r. 7, *vide supra*, p. 51, and *infra*, p. 423. Although there are no words expressly to the purpose, it cannot be intended that if the former owner was entitled to recoup himself for part of the tax against, say, a mortgagee, that fact should cast any liability upon his successor. As to liability of heirs, executors, &c., in case of death, *vide infra*, p. 259.

(*g*) No. VIII. r. 7, *vide infra*, p. 423.

(*h*) General Rules, r. 22 (1) (b) and (2), *infra*, p. 456.

(*i*) No. VII. r. 5, *infra*, p. 419.

or building is let in different apartments or tenements separately occupied, the landlord is to be assessed and charged; in the last case the house or building is treated as a whole (*k*). If the landlord makes default, the tax can be levied from the occupiers (*l*); in the case of the divided house or building, they can recoup themselves out of any subsequent payment of rent (*m*); in the other cases, only out of the next payment of rent (*n*). The landlord or the person immediately entitled to the rent is also charged where the house is let to the accredited minister of a foreign State (*o*).

Where the landlord or immediate lessor makes a request in writing on or before 31st July in any year, the Commissioners may, if they think fit, assess him directly for any lands, houses, or buildings, and continue to do so until he cancels the request by notice in writing (*p*); on his default they may distrain on the premises or property (*q*), as well apparently as on the goods of the landlord. If the occupier pays the tax to avoid distraint, he may recoup himself out of any subsequent payment of rent (*r*).

Tenant's Right to Deduct Tax against Rent.

As the occupier is in general the person assessed, and liable to pay the tax under Schedule A, he is (if he is a tenant) allowed to deduct and retain the tax paid by him against his landlord (*s*), or against a mortgagee in posses-

(*k*) No. VII. r. 8, *infra*, p. 420; as to the terms used in this rule, see note (*b*) on p. 53. "Landlord" presumably means the "immediate lessor"; but the next rule speaks of "landlord or immediate lessor."

(*l*) Rule 8, proviso.

(*m*) No. VIII. r. 9, *infra*, p. 423.

(*n*) No. VIII. r. 8.

(*o*) No. VII. r. 10, *infra*, p. 421.

(*p*) Rule 9 (1) (2).

(*q*) Rule 9 (3); as to distraint, *vide infra*, p. 331.

(*r*) No. VIII. r. 10.

(*s*) Sched. A, No. VIII. r. 1, and second proviso, *infra*, p. 421; as to deduction where the tax is charged under No. III., *vide infra*, p. 70. The debt to the Crown is that of the occupier, and not that of his lessor; see note (*f*) on p. 50, *supra*.

sion, who is not in actual occupation (*t*), so far as it is proportionate to the rent reserved; if the annual value exceeds the rent the tenant cannot deduct tax on the excess (*u*). The rent is discharged as if it had been paid in full to the landlord (*x*). The tenant must have paid the tax before he can deduct it (*y*); but he need not show the landlord his receipt (*z*). The fact that the landlord is entitled to exemption (or to any allowance or deduction) does not affect the tenant's right to deduct (*a*).

For the purpose of deduction, the tax is to be calculated at the rates in force during the period when the rent was accruing due; in Scotland, as regards the rent due for the period ending 15th May, the rate of tax in force at the commencement of the period is to be applied (*b*).

The deduction must be made out of the first payment on account of rent made after the payment of tax (*c*), but if, on the passing of the Act imposing the tax for any year, there is found to have been a failure or deficiency in deduction, it may be made up out of the next payment of rent after the passing of the Act, or recovered as a debt (*d*). Apart from this, there is no right to deduct subsequently, or to recover by action (*e*).

If, however, the rent is paid in arrear, there is nothing to prevent a deduction of tax corresponding (of course at the proper rates) to the whole of the rent so paid; payment of the tax is therefore a good defence in part to an action to recover rent (*f*). And a receiver, who has covenanted

(*t*) No. VII. r. 13, *infra*, p. 421.

(*u*) This is not expressly stated, but is to be gathered from the language of the rule, which has always been so applied in practice.

(*x*) No. VIII. r. 2; see *Beaufort* (*Duke*) v. *I. R.*, [1913] 3 K. B. 48, *supra*, p. 50; *North London, &c. Co.* v. *Moy*, *infra*.

(*y*) *Barnes* v. *Kyffin*, [1916] W. N. 166.

(*z*) *North London, &c. Property Co., Ltd.* v. *Moy, Ltd.*, [1918] 2 K. B. 439.

(*a*) *Swatman* v. *Ambler* (1834), 24 L. J. Ex. 185; the landlord must claim repayment if he desires it, *vide infra*, pp. 274, 293.

(*b*) No. VIII. r. 1, and first proviso thereto; see next paragraph.

(*c*) Rule 1; *Hill* v. *Kirshenstein*, [1920] 3 K. B. 556, *infra*, p. 198.

(*d*) Sect. 211 (2), *vide infra*, p. 400.

(*e*) *Denby* v. *Moore* (1817), 1 B. & Ald. 123; *Cummings* v. *Bedborough* (1846), 15 M. & W. 438.

(*f*) *Tinckler* v. *Prentice* (1812), 4 Taunt. 549; *Franklin* v. *Carter* (1845), 14 L. J. C. P. 241.

to pay four years' arrears of rent due from the company, fulfils his own obligation by paying those arrears less the sums paid by the company for tax under Schedule A (*g*).

A tenant occupier who has been required to pay and has paid tax which ought to be or to have been paid by a former occupier (whether owner or tenant) is entitled to deduct and retain the amount paid out of any subsequent payment of rent (*h*); in this case he is not limited to make his deduction against the next payment of rent; it is not clear for what reason.

Arguing upon this rule, it has been held that *a fortiori* a continuing occupier is entitled, where he has failed to pay rent for one year, to deduct the tax paid for that year, against a payment of rent for the next year (*i*). If this reasoning were carried to its logical conclusion, the limitation in Rule 1 to deduction out of the next payment of rent must be discarded altogether; moreover, it ignores the words in that rule which limit the amount to that which represents the "rate or rates of tax in force during the period through which the said rent was accruing due." Bearing these words in mind, it is submitted that the true view is that, although the payment of rent in arrear does not prevent a deduction of tax (*k*), the tax paid for the period during which that rent accrued due can only be deducted against that rent when it is paid, and not against the rent accrued due in any subsequent period; and further that Rule 7 of No. VIII. must be read subject to Rule 1, and not *vice versâ*.

A statutory provision directing a tenant to make some

(*g*) *In re Sturmey Motors, Ltd.*, [1913] 1 Ch. 16; in the same case it was also decided that the receiver was entitled to make a deduction for income tax paid by himself, although he had already made a payment of rent subsequent to the payment of tax.

(*h*) No. VIII. r. 7, *supra*, p. 51. Where an outgoing tenant has paid the tax and handed the receipt to the incoming tenant (his assignees) it may be inferred that the latter has in effect paid the tax, *Clennell* v. *Read* (1816), 7 Taunt. 50.

(*i*) *In re Hayman, Ltd.* (*No.* 2), [1917] 1 Ch. 545; the receiver's occupation continued that of the company. An agreement made by the receiver was construed in the same way as that in *In re Sturmey, supra*, note (*g*).

(*k*) *Tinckler* v. *Prentice*; *Franklin* v. *Carter*, *supra*, p. 56.

payment (other than income tax) and deduct a corresponding amount from his rent does not alter the effect of the provisions above discussed; and therefore a tenant of licensed premises is entitled to deduct the tax on the whole of the rent payable by him, although he has, in compliance with the Licensing Acts (*l*), paid a portion of that rent to the Inland Revenue as compensation charge (*m*).

Any difference between landlord and tenant with regard to the deduction of tax is to be settled by the General Commissioners in the same manner as a difference between succeeding occupiers (*n*).

A landlord refusing to allow the deduction is subject to a penalty of 50*l.* (*o*).

Agreements to the Contrary void.

An agreement for the payment of interest, rent or other annual payment without the deduction of tax is void (*p*), that is, the particular stipulation is void, but the rest of the agreement is enforceable (*q*). A tenant has been held entitled to repayment of income tax paid by him in accordance with a covenant that he should pay his rent in full and that his landlord would reimburse him (*r*); but it does not follow that the landlord would be allowed, under such an agreement, to recover the rent in full,

(*l*) See now Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 21 (3).

(*m*) *Hancock* v. *Gillard*, [1907] 1 K. B. 47; there is no conflict between this decision and that in *Beaufort* (*Duke*) v. *Inland Revenue*, [1913] 3 K. B. 48, *supra*, pp. 50, 56.

(*n*) General Rules, r. 22 (1) (a) and (2), *vide supra*, p. 54.

(*o*) Rule 23 (1), *infra*, p. 456.

(*p*) General Rules, r. 23 (2), *infra*, p. 456. This provision in its bearing on interest, &c., is discussed *infra*, p. 199. The decisions in *Colbron* v. *Travers* (1862), 12 C. B. N. S. 181, and *Beadel* v. *Pitt* (1865), 13 W. R. 287, in which covenants to pay an increased rent if the income tax should be reimposed were held to be good, appear to have no bearing at the present day.

(*q*) In *Redshaw* v. *Balders* (1811), 4 Taunt. 57, a covenant to pay an annuity, and in *Fuller* v. *Abbott*, *ibid.* 105, a lease, were held good except for the stipulation to pay the annuity and the rent free of deductions; see also the cases cited on p. 59, *infra*.

(*r*) *Lamb* v. *Brewster* (1879), 4 Q. B. D. 607.

if the tenant chose to disregard it and to pay the rent after deduction of tax.

The provision in question applies to marriage settlements (*s*) and to agreements to pay alimony (*t*); but not to wills, for a testator is at liberty to fix the amount of an annual payment without reference to any other party (*u*). But the fact that the payment is made under a will does not defeat the right to deduct tax, unless the testator directs that no deduction shall be made (*x*).

Right to Deduct Tax against Annual Payments and Charges.

A rule of Schedule A (*y*) gives to a landlord, owner or proprietor who is charged or is liable to deduction under that Schedule, the right in his turn to deduct and retain tax on the payment (whether payable half yearly or at any shorter or more distant period) of any "yearly interest, annuity, rent, rentcharge (whether under the Tithe Act, 1836, or otherwise) (*z*), fee-farm rent, rent service, quit rent, feu duty, teind duty (*z*), stipend to a licensed curate, or other annual payment reserved or charged upon any lands, tenements, hereditaments or heritages" (*a*). Interest paid by the year is included (*b*). The rule applies to persons against whom tax has been deducted by a tenant in paying his rent (*c*), by an occupier in paying a composition, rent or payment for tithes (*z*), and by any person in paying any of the annual sums above specified. A tenant or other occupier of lands must not deduct against rent more than he has actually paid in respect of those lands (*d*). In Scotland, as regards any

(*s*) *Floyer* v. *Bankes* (1863), 32 L. J. Ch. 610, *infra*, p. 199.

(*t*) *Vide infra*, p. 199.

(*u*) *Lovat* v. *Leeds* (*Duchess*) (1862), 31 L. J. Ch. 503; *Festing* v. *Taylor* (1862), 32 L. J. Q. B. 41; *infra*, p. 199.

(*x*) See the cases cited *infra*, p. 199.

(*y*) No. VIII. r. 4, *infra*, p. 422; corresponding to the tenth rule of No. IV. of Schedule A in the Act of 1842, with some alteration of arrangement.

(*z*) As to tithes and payments in lieu thereof, *vide infra*, p. 62.

(*a*) No. VIII. r. 4 (2).

(*b*) Per Lord DAVEY in *London County Council* v. *A.-G.*, [1901] A. C. at p. 41.

(*c*) Rule 1, *supra*, pp. 55—58.

(*d*) But if he is the owner he may for this purpose disregard the reduction

payment due for the period ending 15th May, the tax is to be calculated at the rate in force at the commencement of the period. Deduction under this rule operates as a discharge of the amount deducted (*e*).

Tax payable on interest due to a mortgagee or creditor in possession under a mortgage, heritable bond or wadset, is to be allowed in any settlement of accounts thereunder (*f*); the mortgagor or debtor is to be credited with the tax due on the interest which the mortgagee or creditor has paid to himself out of the rents (*g*).

The above rules appear to provide completely for "deduction at the source" of tax against any person receiving a payment issuing out of land or out of any incorporeal hereditament assessed under Schedule A (*g*), after the occupier (*i*), or the person receiving the profits (*k*), as the case may be, has been charged in the first instance. Apart from the question of the right to retain the tax so deducted, however, the same ground is to a large extent, if not wholly, covered by Rule 19 (1) of the General Rules (*l*), where the annual payments dealt with include such as are payable as charges on the property of the payer, or as reservations thereout (*m*). In the rules of Schedule A (*n*) other annual payments besides yearly interest and annuities are mentioned by name; and some of these (such as a stipend to a licensed curate) might possibly not be held to be within the purview of the general rule; but apart from such a possible application of the *ejusdem generis* principle of construction, it is difficult to point to any difference between the rules in their scope or effect as far as the right to deduct tax under Schedule A

allowed to him for maintenance, &c., under rule 7 of No. V.; see No. VIII. r. 11, *infra*, p. 423.

(*e*) Rule 5, *infra*, p. 422.

(*f*) No. VII. r. 13 (2), *infra*, p. 421.

(*g*) Per Lord DAVEY in *London County Council* v. *A.-G.*, [1901] A. C. at p. 41.

(*i*) *Vide supra*, p. 49.

(*k*) *Vide infra*, pp. 63 *sqq*.

(*l*) Set out *infra*, p. 455.

(*m*) *London County Council* v. *A.-G.*, [1901] A. C. 26.

(*n*) No. VIII. r. 4 (2), quoted on p. 59.

is concerned. The reader is accordingly referred to Chapter VIII., where Rule 19 (1) is fully discussed (*o*).

Rule 19 (1), however, gives a right to retain the tax deducted, only where the payment has been wholly made out of profits or gains brought into charge under any Schedule, including Schedule A (*p*); where the payment is not so made, the payer must account for the tax to the Crown (*q*); and upon the question whether that tax when deducted under Schedule A can be retained or must be accounted for, the provisions of the General Rules have been held to prevail. The language of Rule 4 of No. VIII. of Schedule A, if considered by itself, would be wide enough to justify retention in any case where the payment is charged upon the lands; but it has been decided by the House of Lords, in a case where the payment was charged in part upon lands owned and occupied by the payers, that they were not entitled to retain the tax assessed under Schedule A in respect of those lands, because they derived from the lands no actual income out of which to make the payment (*r*). Their Lordships did not discuss in any detail the relevant provisions (*s*); but the effect of their decision was to limit the operation of the Tenth Rule (*t*) by allowing retention of the tax, only where the income out of which the payment is made has been actually received in money and has been taxed either directly or by way of deduction. It is difficult to suppose that such a limitation was intended to apply universally; it has certainly not been so applied in practice.

(*o*) *Infra*, pp. 181 *sqq*. The cases of *London County Council* v. *A.-G.*, [1901] A. C. 26, and *A.-G.* v. *London County Council*, [1907] A. C. 131, are of special importance in this connection; for the Lords dealt particularly with the effect of the tenth rule of No. IV. of the Act of 1842, the predecessor of rule 4 of No. VIII. in the Act of 1918; see per Lord DAVEY, [1901] A. C. at pp. 41, 42, and per Lord MACNAGHTEN, [1907] A. C. at p. 137.

(*p*) *London County Council* v. *A.-G.*, [1901] A. C., *supra*.

(*q*) General Rules, r. 21, *infra*, p. 455.

(*r*) *A.-G.* v. *London County Council*, [1907] A. C. 131; the facts are more fully stated *infra*, p. 194.

(*s*) Act of 1842, Sched. A, No. IV. Tenth Rule; s. 102; Customs and Inland Revenue Act, 1888, s. 24 (3); corresponding with Sched. A, No. VIII. r. 4, and General Rules, rr. 19 (1) and 21, *infra*, pp. 455, 456.

(*t*) Now rule 4 of No. VIII. of Sched. A in the Act of 1918.

An owner's right to deduct is not affected by the fact that the annual value of the lands is reduced for the purposes of collection under Rule 7 of No. V (*u*): and he may make his deduction as if he had paid or borne the tax on the full annual value (*x*).

As to settlement of differences, as to the penalty for refusal to allow deduction, and as to the invalidity of any agreement against deduction, the same provisions apply as in the case of rent (*y*).

Tithe and Tithe Rentcharge.

Various kinds of tithe and tithe rentcharge are taxed under four separate rules of Schedule A. Tithe commutation rentcharges confirmed under the Tithe Act, 1836, are specifically excepted from the operation of Rule 3 of group No. II. and are therefore taxable under the General Rule upon "annual value" as there defined (*z*). In the case of tithe rentcharge, the necessary cost of collection must be deducted from the receipts before the annual value is arrived at (*z*); but it is probable that there ought also to be a deduction for the profit which would be required by any person becoming a yearly tenant of the rentcharge, because the annual value is the rack-rent at which the rentcharge "is worth to be let by the year" and "who ever heard of a man giving 100*l.* a year in order to get 100*l.* a year (*a*)?"

Tithes taken in kind, dues and money payments in right of the Church or by endowment or in lieu of tithes (not being tithes arising from lands), and lands in Scotland, are taxed under No. II. upon the average yearly profit of the three preceding years (*b*). Tithes arising from lands, if compounded for, and rents and other money payments in lieu of them, except tithe commutation rentcharge, are

(*u*) *Vide supra*, p. 43.

(*x*) No. VIII. r. 11, *infra*, p. 423.

(*y*) General Rules 22 and 23, *vide supra*, pp. 58, 59.

(*z*) *Stevens* v. *Bishop* (1887), 19 Q. B. D. 442; 20 Q. B. D. 442; as to the meaning of "annual value," *vide supra*, p. 40. Rule 3 is set out, *infra*, p. 409.

(*a*) Per Lord DUNEDIN in *Port of London Authority* v. *Orsett Union*, [1920] A. C. at p. 298.

(*b*) Sched. A, No. II. rr. 1 and 2.

taxed upon the profits of the preceding year (*c*). In each of these cases, the profits ascertained as directed are given the name of "annual value"; and in each case a deduction for necessary expenses of collection must be allowed (*d*), for profits means net receipts, and not gross takings; but it cannot be suggested in these cases that there is any deduction for the assumed profit of a tenant, as in the case of tithe rentcharge under the Act of 1836.

As regards all kinds of tithe, tithe rentcharge, &c. deductions are allowed (from annual value or profits as the case may be) by specific rules in respect of local rates (*e*), tenths, first fruits, duties and fees on presentation, procurations and synodals (*f*), and as to repairs of any collegiate church or chapel or of the chancel of a church by any ecclesiastical or collegiate body, rector, vicar or other person bound to repair the same (*g*). The last mentioned rule also applies to repairs of university colleges and halls. A deduction is allowed for unredeemed land tax (*h*).

Certain deductions are allowed generally from the profits of clergymen and ministers of any religious denomination (*i*).

Tithe, etc.: Persons Chargeable.

The rules directing what persons are to be charged with the tax on tithes and payments in lieu thereof (including rentcharge under the Act of 1836) appear in two different places (*j*), and seem at first sight to differ according to the legal nature of the payments, but it is not so, except as to

(*c*) Rule 3.

(*d*) Cf. *Stevens* v. *Bishop, supra*, p. 62.

(*e*) As to tithe commutation rentcharge by Sched. A, No. V. r. 1 (d), and No. VII. r. 7; as to tithes and other compositions for tithes under No. IV. r. 1 (b), and No. VII. r. 7. See, however, No. V. r. 3.

(*f*) No. V. r. 1 (a), (b).

(*g*) No. V. r. 1 (c). The expenses of repairing a chancel, which the tithe-owner is bound to repair, would not be admissible but for this rule; cf. *Dean and Chapter of St. Asaph* v. *Llanrhaiadr Overseers*, [1897] 1 Q. B. 511.

(*h*) No. V. r. 1 (e).

(*i*) General Rules, r. 2, *infra*, p. 451.

(*j*) Sched. A, No. II. r. 4; No. VII. rr. 6, 7, *infra*, pp. 409, 420; see *Stevens* v. *Bishop* (1888), 20 Q. B. D., *supra*, p. 62, per FRY, L.J., at p. 448.

two minor points. The Commissioners may at their discretion assess either the occupiers of the lands from which the tithes arise, the persons liable to make the payments (that is, speaking generally, the owners of the lands), or the persons entitled to receive them (*k*). But in the case of rentcharges under the Act of 1836, they cannot assess the owner of the rentcharge unless he makes a return for the purpose (*l*), and they cannot assess his lessee or tenant, agent or factor; in the case of tithes in kind and of other payments in lieu they can do both these things (*m*).

If the tax is made upon the recipient of the payment or on the owner of the lands not being the occupier, the amount of the rentcharge must be deducted before arriving at the annual value in assessing the land itself (*n*).

Where the occupier is charged and pays the tax on any "composition, rent or payment for tithes," he may deduct the tax from the next payment as in the case of rent (*o*); and an owner of lands in similar circumstances may deduct the tax as in the case of other annual payments to which his lands are subject (*p*).

A recipient of tithe or tithe rentcharge or other composition for tithes (provided it constitutes a hereditament or heritage) has the same right to deduct tax on an annual payment to which it is subject, including a "stipend to a licensed curate" (*p*).

Manorial Dues and Fines.

In the case of manors and other royalties (*q*), including dues and other services or casual profits, the tax is levied

(*k*) See note (*j*), p. 63.

(*l*) No. VII. r. 7.

(*m*) No. II. r. 4.

(*n*) Otherwise the tax on the payment would be assessed twice over; see also No. VII. r. 7 (2).

(*o*) No. VIII. r. 3, *infra*, p. 422; as to rent, *vide supra*, p. 55.

(*p*) Rule 4, *vide supra*, p. 59; "rentcharge (whether under the Tithe Act, 1836, or otherwise), . . . teind duty" are specifically mentioned among the "annual sums" to which that rule applies; and the words "other annual payment reserved or charged" are sufficient to cover other kinds of composition for tithes.

(*q*) That is, royalties of a manorial nature, not ordinary mineral royalties or royalties on patents or on copyright publications.

on the average yearly profits of the seven preceding years (*r*) (called for this purpose "annual value"). Here a deduction for the costs incurred in collection has been refused, on the ground that such costs were not admitted to be necessary (*s*). It is submitted that this decision cannot be good law, or that the necessity for such costs can in almost every case be proved, for it is inherent in the nature of profits that the cost of obtaining them should be excluded (*t*). True, it was said by POLLOCK, B., in that case that "profits [in the rule in question] does not mean profits in the sense of net profits in a mercantile business, but the average amount for one year of the interest on property that the person has in those rights which are taxed" (*u*); but his Lordship is obliged to say that the use of the words under No. II. "is not quite felicitous" (*u*), and gives no reason for the view that its meaning there is different from that which it bears elsewhere in the Income Tax Acts, notably in the immediately succeeding group of rules, No. III. of Schedule A.

Fines received in consideration of any demise (apart from manors and royalties) are taxed upon the profits of the preceding year, subject, however, to a deduction for any part of the money applied as capital productive of taxable income (*x*), which appears to be discretionary on the part of the Commissioners, and not to be claimable as of right; the deduction cannot be made where the money is merely on temporary deposit in a bank, for "there must be some element of permanence" in the application of money as capital (*y*).

The tax is charged on the lord of the manor or royalty, or the person renting the same (*r*); or on the receiver of the fines (*x*).

(*r*) Sched. A, No. II. r. 5, *infra*, p. 409. As to averaging, see observations in connection with Sched. D, *infra*, p. 162.

(*s*) *Duke of Norfolk* v. *Lamarque* (1890), 24 Q. B. D. 485; *Stevens* v. *Bishop*, *supra*, p. 62, was distinguished on that ground.

(*t*) *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, [1915] A. C. 433, *infra*, p. 135.

(*u*) 24 Q. B. D. at p. 490.

(*x*) Sched. A, No. II. r. 6.

(*y*) *Lord Mostyn* v. *London*, [1895] 1 Q. B. 170.

Other Profits arising from Lands.

Profits not dealt with by the previous rules of No. II., and not being taxable by way of deduction, but arising from land not in the actual possession or occupation of the person to be charged, are taxed upon the yearly profits averaged over a period which is left to the discretion of the Commissioners (*z*). In the only case in which the Courts have held Rule 7 of No. II. to be appropriate (*a*), the Crown did not refuse to bring the matter under the General Rule of No. I., but preferred to apply the rule now in question, the object of which was described as being "to bring within the ambit of case No. II. everything that may be differentiated from rent in the ordinary sense of the term, and yet is a profit arising from land, varying in amount according to changing circumstances and at the same time arising from the land and not from some business carried on upon the land" (*b*). HAMILTON, J., accepted that view, and held that the whole of a dead rent, payable in respect of coal comprised in a mining lease but not yet won, was taxable under this rule in the hands of the lessor, although the lessees had paid the rent with income tax deducted; the lessor might, he said, have questioned or resisted the deduction. The payment was not an annual payment comparable to an annuity or yearly interest on money (*c*), and was therefore taxable under Schedule A, and not under Schedule D.

Rule 7 of No. II. provides for the recovery of the tax from the receiver of the profits or the persons entitled thereto; under the General Rule of No. I. the occupier would have been liable (*d*); and the preference for the former rule shown by the Crown in this case was doubtless

(*z*) Sched. A, No. II. r. 7; in the Act of 1842 this appeared as the sixth rule. As to the effect of the words "actual possession or occupation," see *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516, *infra*, p. 90.

(*a*) *Hill* v. *Gregory*, [1912] 2 K. B. 61.

(*b*) [1912] 2 K. B. at p. 68.

(*c*) *Vide infra*, p. 186.

(*d*) *Vide supra*, p. 49.

due to the difficulty of establishing that the lessor was in occupation (*e*).

Commencement of Possession or Interest.

If the possession or interest of the person to be charged in respect of any of the profits taxed under the Rules of No. II. has commenced within the period laid down for calculating the yearly profits, those are to be calculated in proportion to the profits received since the commencement of the possession or interest (*f*).

(*e*) *Vide supra*, p. 35.
(*f*) Sched. A, No. II. r. 8, *infra*, p. 410.

CHAPTER III.

TRADING CONCERNS ASSESSED UNDER SCHEDULE A.

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Scope of Rules Grouped under No. III.

It has been pointed out in Chapter II. that certain classes of property (apart from the profits issuing out of land and assessed under No. II.) are taken out of the General Rule No. I., and are assessed under No. III. (*a*). These classes of property appear to have been selected with a view to excluding from the scope of the General Rule property as to which it is difficult "to separate the profit derived from the use of the land from the profit derived from the mercantile undertaking carried on by means of the land or its produce" (*b*). The words quoted were in fact spoken of Rule 3 of No. III., which has also been described as applying to "properties such as ironworks, which are real property, deriving their annual value from being ancillary to trade" (*c*); and the question has been discussed above (*d*) whether they apply also to Rules 1 and 2, or whether those rules are wider in their scope and apply to

(*a*) *Supra*, pp. 38—40.

(*b*) *Harris* v. *Edinburgh Corporation*, *supra*, p. 38.

(*c*) Per Lord Blackburn in *Coltness Iron Company* v. *Black* (1881), 6 A. C. at p. 332.

(*d*) *Supra*, p. 39.

all property of the kinds enumerated in them whether carried on for mercantile purposes or not. But that question is not in practice very important; the points of interest upon these rules arise in their application to undertakings carried on for the sake of profit or for the discharge of municipal and other statutory duties.

The following are the Rules 1, 2 and 3 in question, omitting the provisos to Rule 2 (*e*); note that these rules are subject to the general words of Schedule A (*f*), and apply therefore only to concerns which are situate in the United Kingdom :—

> "1. In the case of quarries of stone, slate, limestone, or chalk, the annual value shall be understood to be the profits of the preceding year.
>
> "2. In the case of mines of coal, tin, lead, copper, mundic, iron, and other mines, the annual value shall be understood to be the average amount for one year of the profits of the five preceding years: . . . .
>
> "3. In the case of ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands, tenements, hereditaments or heritages, the annual value shall be understood to be the profits of the preceding year."

The rules of No. III. do not apply to a case where a trade (not being of the nature of the concerns referred to in those rules) is carried on upon any premises, such as the letting by a hospital of rooms for entertainment purposes (*g*).

(*e*) *Vide infra*, p. 81.
(*f*) *Supra*, p. 33.
(*g*) *Coman* v. *Rotunda Hospital* (*Governors*), [1921] A. C. 1, *supra*, p. 34.

Persons Chargeable.

The tax is assessed on the person or body of persons (*h*) carrying on the concern or on the agents or other officers who manage it or receive its profits (*i*). They have, if they are tenants, the same right to deduct tax against payment of rent (*k*), and if they are owners, the same right to deduct tax against the payment of any annual sum to which their lands are subject (*l*), as other occupiers or owners who have paid or borne tax under Schedule A, as well as the right or duty to deduct tax against any interest, annuity, or other annual payment which is discussed in connection with Schedule D (*m*). But a yearly instalment of the purchase price of minerals is not rent, nor is it an "annual payment," so as to give the purchaser the right to deduct tax against the vendor (*n*).

Annual Value Equivalent to Profits.

As regards all the classes of property affected by these rules, the annual value "shall be understood to be" the profits of the undertaking: under Rules 1 and 3 the actual profits of the preceding year; under Rule 2 the yearly profits calculated on an average of the five preceding years (*o*). The reason for enacting that these undertakings are to be assessed on an annual value which is "understood to be" the profits, rather than that they are to be assessed on profits, is a historical one, namely, that it had always been the practice to assess in this way the annual value of

(*h*) See definition in sect. 237, *infra*, p. 406; and General Rules, r. 1, *infra*, p. 451.

(*i*) Schedule A, No. III. r. 4, *infra*, p. 411.

(*k*) *Swatman* v. *Ambler* (1854), 24 L. J. Ex. 185; *Edmonds* v. *Eastwood* (1858), 27 L. J. Ex. 209; *Beaufort* (*Duke*) v. *I. R.*, [1913] 3 K. B. 48; *vide supra*, p. 55.

(*l*) *Supra*, p. 59.

(*m*) *Infra*, p. 180. As to deduction of tax against shareholders, &c., see rule 5, and *Ashton Gas Co.* v. *A.-G.*, *infra*, p. 243.

(*n*) *Taylor* v. *Evans* (1856), 25 L. J. Ex. 269; *Foley* v. *Fletcher* (1858), 28 L. J. Ex. 100, *infra*, p. 187.

(*o*) The principles bearing upon the computation of averages under Schedule D apply here also, though the period is different, *Ryhope Coal Co., Ltd.* v. *Foyer* (1881), 7 Q. B. D. 485, *infra*, p. 164, as well as the rules of Sched. D as to succession and loss from a specific cause, *vide infra*, p. 167.

quarries, mines, etc. for purposes of poor rate (*p*). Its principal effect is that the property itself is not to be valued as if it were stock-in-trade at the beginning of the year and again at the end of the year, and the difference (as the case may be) deducted from or added to the balance of the trading account, a method which would be perfectly correct in ascertaining the profits of an ordinary trade or business unconnected (except as to its local situation) with property in land. It was at one time held to be proper to apply such a method of assessment in ascertaining the annual value under Rule 2 of a coal mine (*q*), but that decision was overruled by the House of Lords (*r*); its effect, if it had stood, would have been that the income tax would be imposed on mines not only "by a different set of words," but "on a radically different principle" from that imposed on the properties within the scope of the General Rule No. I. (*s*).

Application of Rules of Schedule D.

By Rule 8 of No. III.:—

"The properties described in Rules 1, 2 and 3 shall be assessed and charged in the manner herein mentioned according to the rules applicable to Schedule D so far as the same are consistent with the rules of this Number."

This provision originally appeared in the Revenue Act, 1866 (*t*), in language which is only slightly different: "such words are easily written, but whether they conduce to clearness and the facility of administering justice, may perhaps be open to argument" (*u*). They certainly gave rise to the conflict of judicial views indicated in the last paragraph. The enactment, at any rate, does not mean that the properties in question are transferred from

(*p*) Per Lord BLACKBURN in *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315, at pp. 330—334.

(*q*) *Knowles & Sons, Ltd.* v. *McAdam* (1877), 3 Ex. D. 23.

(*r*) *Coltness Iron Co.* v. *Black, supra.*

(*s*) *Ibid.*, per Lord BLACKBURN, 6 A. C. at pp. 329, 330.

(*t*) 29 Vict. c. 36, s. 8.

(*u*) *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485, per GROVE, J., at p. 492.

Schedule A to Schedule D (*x*). It is not possible to state exhaustively which of the rules applicable to Schedule D are consistent with the rules of No. III., or how far they are so consistent (*y*). But Lord BLACKBURN thus stated the test to be applied, and his conclusion as to the effect of sect. 8 of the Act of 1866 (*z*):—

"I think that the duties are to be assessed according to the rules of Schedule D, and consequently all the anxiously-devised provisions for keeping the returns under Schedule D secret and confidential, to be found from sect. 100 to sect. 131 (*a*), are made in future to apply to returns for the concerns described in No. III. of Schedule A, and any rule expressed as to the mode of computing the balance of the profits and gains during the period of three years given in Schedule D which is not inconsistent with No. III., may, perhaps, be made in future to apply to the mode of computing the annual profits of properties chargeable under No. III. . . . If the effect of sect. 8 of 29 Vict. c. 36 (*b*), was to transfer cases in Schedule A, No. III., to Schedule D, it would change the respective times on an average for which the profits were to be assessed. Mines would be reduced from a five-year period to a three-year period. Quarries and things of that sort would be raised from a single year to three. I cannot think this was either intended or expressed."

In a case decided by the King's Bench Division a few days before the decision of the House of Lords in *Coltness Iron Co.* v. *Black* it was held by LINDLEY, J., that the rules under Schedule D were to be applied as a whole, subject to the profits being estimated for the periods laid down in No. III. of Schedule A, and not for those laid down in Schedule D (thus the profits of a mine were to be assessed on a five years' and not on a three years' average); but

(*x*) Such was the *ratio decidendi* of *Knowles* v. *McAdam*, which was overruled as stated, *supra*, p. 71.

(*y*) See, however, *Dumbarton Harbour Board* v. *Cox*, *infra*, p. 74.

(*z*) *Coltness Iron Co.* v. *Black*, 6 A. C. at pp. 337, 338.

(*a*) Of the Income Tax Act, 1842; see Chap. XV.

(*b*) Now Sched. A, No. III. r. 8.

GROVE, J., does not appear to have agreed on this point, which he considered immaterial (*c*). It is submitted that in the light of Lord BLACKBURN'S observations above quoted the view taken by LINDLEY, J., is unsound; and that where Schedule A contains a relevant rule, inconsistent with a rule bearing on the same point under Schedule D, the rule under Schedule A governs the matter.

The question has more recently been raised whether sect. 101 of the Act of 1842 (now replaced on this point by Schedule D, Cases I. and II. r. 13)(*d*) is one of the rules made applicable to No. III. of Schedule A by the Act of 1866, so that the loss on one concern assessed under No. III. can be set off against the profit on another. It having been laid down in *Coltness Iron Co.* v. *Black* that sect. 8 is not "limited to making a change in the tribunals before which the several assessments might come," the question arose how much further the section goes. It was "not contended that sect. 101 can be called one of the rules prescribed by Schedule D" (*e*). Upon that question it was held that the Act of 1866 did not go the length of applying to persons assessed under Schedule A, No. III., the benefit given by sect. 101 of the Act of 1842, and that that benefit was limited to persons carrying on concerns the profits of which are made chargeable under the rules of Schedule D, sect. 8 of the Act of 1866 notwithstanding. In the Court of Appeal it was said that that section "does not transfer the concerns from Schedule A to Schedule D . . . . It in no way incorporates sect. 101, which is not, and cannot be, called a rule prescribed by Schedule D. The Act of 1866 . . . . gave fuller directions for ascertaining profits where Schedule A was silent, but it had no further or other effect" (*f*). It will be observed that neither in the

(*c*) *Ryhope Coal Co., Ltd.* v. *Foyer* (1881), L. R. 7 Q. B. 485, at pp. 500, 492—3; see also *Inland Revenue* v. *Farie* (1878), 16 S. L. R. 189; both cases are further discussed, *infra*, p. 170.

(*d*) *Vide infra*, p. 173.

(*e*) *Wakefield R. D. C.* v. *Hall*, [1912] 2 K. B. 265, per HAMILTON, J., at p. 276; (see note (*b*) on p. 72).

(*f*) [1912] 3 K. B. 328, *per* COZENS-HARDY, M.R., who delivered the judgment of the Court of Appeal, at p. 338.

King's Bench Division nor in the Court of Appeal was it held that sect. 101 of the Act of 1842 was in any way inconsistent with No. III. of Schedule A; the ground of the decision in both Courts was that sect. 101 could not be called a rule prescribed by Schedule D. Rule 13 of Sched. D, Cases I. and II. (*g*), which now replaces sect. 101 so far as it related to this point, is certainly (in the words of Rule 8 of No. III.) one of "the rules applicable to Schedule D," and there appears to be no inconsistency between it and No. III. of Schedule A. The result of the consolidating Act of 1918 appears therefore to be that the decision in *Wakefield R. D. C.* v. *Hall* on this point is no longer applicable, and that a person carrying on two or more distinct concerns chargeable under No. III. of Schedule A is entitled to set off the loss incurred on one against the profit made on another (*h*).

The provisions allowing deduction for depreciation of machinery or plant formerly contained in sect. 12 of the Customs and Inland Revenue Act, 1878, now appear in the shape of rules applicable to Schedule D (*i*), which are, on the face of them, consistent with the rules of No. III. of Schedule A; it is submitted therefore that concerns assessable under that number are entitled to such deduction (*k*).

The rule as to loss occurring from some specific cause after a change of ownership has been held to apply (*k*).

Calculation of Profits under No. III.

The general principle governing the computation of income or profits under the Income Tax Acts "is that

(*g*) *Vide infra*, p. 173.

(*h*) Rule 13 of Sched. D, Cases I. and II. no longer expressly refers to "concerns"; but by the definition in sect. 237 of the Act of 1918, the word "'trade' includes every . . . concern in the nature of trade."

(*i*) Sched. D, Cases I. and II. rr. 6, 7, *infra*, p. 436. In *Dumbarton Harbour Board* v. *Cox* (1918), 56 S. L. R. 122; 7 Tax C. 147, *infra*, p. 58, a claim was made for a deduction under sect. 12 of the Act of 1878 in an assessment made under Sched. A, No. III. before the passing of the Income Tax Act, 1918; but it did not become necessary to decide whether the section applied, because it was held that the bed of a harbour was not "machinery or plant."

(*k*) Rule 11, *infra*, p. 439; *Ryhope Coal Co.* v. *Foyer*, *infra*, p. 169.

every one shall contribute . . . . in proportion to the income of which he has the immediate command, without any consideration of the true character of that income, or whether it is derived from the annual return of the invested capital, or from the expenditure of the capital itself" (*l*). This principle governs assessments under No. III. of Schedule A.

One of the rules applicable to Schedule D, which it has been sought to apply to No. III. of Schedule A (*m*), is that which now figures as Rule 3 of the rules under Cases I. and II. of Schedule D, and which contains a number of specific prohibitions, showing what is not to be deducted in computing profits (*n*). But if any part of this rule prohibits an allowance, which from the nature of the concerns in No. III. ought to be made in respect of them, then that part "should be rejected as inconsistent with No. III. If no such allowance should be made the rule is not required" (*o*). It seems therefore to have little or no effect on No. III. of Schedule A. Moreover, the rule has recently been held by the House of Lords by no means to contain a complete code, even as regards trades charged under Schedule D itself (*p*); and under No. III. of Schedule A as under Schedule D, it may be said generally that any payment may be deducted which would be a "proper debit item to be charged against incomings of the concern when computing the balance of profits of it" (*q*).

The profits have to be calculated before any distribution

(*l*) *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 2 Tax C. 516, per Lord McLaren at p. 532, *infra*, p. 90; as to the inadmissibility of capital deductions, *vide infra*, pp. 82—84.

(*m*) *Addie* v. *Inland Revenue* (1875), 2 R. 431; 1 Tax C. 1.

(*n*) *Usher's Wiltshire Brewery* v. *Bruce*, [1915] A. C. 433; *infra*, pp. 135, 157.

(*o*) *Coltness Iron Co.* v. *Black*, 6 A. C., per Lord Blackburn at pp. 337—8; thus in *Morant* v. *Wheal Grenville Mining Co.* (1894), 3 Tax C. 298, Wright, J., remarked at p. 301, "even without that rule of Schedule D, it seems to me that whatever is really capital cannot be deducted before arriving at the amount that is to be treated as profit." See, however, *Mersey Docks* v. *Lucas* (1883), 8 A. C. pp. 904—6, where Lord Selborne deals with the rule as if it were applicable to No. III. of Sched. A; so too in *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B. 575.

(*p*) *Usher's Wiltshire Brewery* v. *Bruce*, [1915] A. C. 433; *infra*, p. 135.

(*q*) *Ibid.*, per Lord Sumner, [1915] A. C. at p. 468.

of any share or dividend is made, or any payment to a "creditor or other person . . . who has a claim on the profits" (*r*). The words quoted are limited to persons like debenture-holders who have claims on the net profits; that is, on "the incomings of the concern after deducting the expenses of earning and obtaining them" (*s*); it would be absurd to suppose that sums due to be paid out of the gross receipts to an ordinary business creditor, *e.g.*, for goods supplied, are not deductable in arriving at the profits. Neither must there be any deduction for any payment in the nature of rent (*r*), unless any lands used or occupied in connection with the concern are separately assessed under the General Rule No. I. (*t*); in such a case the whole annual value must be deducted, for otherwise it would be taxed twice over.

Deduction in respect of Mills, Factories, &c.

Where any mills, factories or similar premises are owned by the person carrying on the concern and occupied by him for its purposes one-sixth of the annual value of the premises (ascertained according to the General Rule) is also to be deducted (*u*). This enactment is intended to put the owner of a concern assessed under No. III. of Schedule A in the same position as a person carrying on any ordinary trade or concern assessed under Schedule D with regard to the allowance of one-sixth of annual value, which is supposed to cover expenses of repairs (*x*); but note that sect. 18

(*r*) Schedule A, No. III. r. 5; the language is archaic and illogical; for instance, the phrase "the value of the produce" is introduced for the first time where what is meant is clearly the "annual value," that is, the profits on the yearly basis laid down in rule 1, 2 and 3, as the case may be. A similar but not identical confusion of language appears in No. III. of Sched. A of the Act of 1842, see *Mersey Docks* v. *Lucas* (1883), 8 A. C., per Lord SELBORNE at pp. 903, 904, *infra*, p. 80. See also *Broughton Coal Co.* v. *Kirkpatrick* (1884), 14 Q. B. D. 491, *infra*, p. 84. As to the right to deduct tax against landlords, &c., *vide infra*, pp. 181, 189. See *Ashton Gas Co.* v. *A.-G.*, *infra*, p. 77.

(*s*) Per Lord SELBORNE, *loc. cit.*

(*t*) Rule 6.

(*u*) Finance Act, 1919 (9 & 10 Geo. 5, c. 32), s. 18 (2) (3).

(*x*) Sched. D, Cases I. and II. r. 5 (2), *infra*, p. 436; see also Sched. A, No. V. r. 7, discussed *supra*, p. 43.

of the Act of 1919 does not refer in any way to repairs nor does it logically correspond with the rule under Schedule D applicable to this matter (*x*). Consequently it appears that the deduction allowed by sect. 18 is admissible in addition to (and not in substitution for) any sum which whether incurred for repairs or renewals or any other object is a "proper debit item" (*y*) in ascertaining the profits of the concern. It is difficult to say what is meant by "similar premises" to mills or factories; in more senses than one, the whole of, say, an ironworks or a gasworks might be described as premises "similar" to a mill or factory; but this interpretation would reduce the provision to absurdity. The phrase must obviously be read with some restriction, and it is suggested that it may be taken as applying only to those portions of the hereditaments included in the concern which are premises "similar" to mills and factories in the sense that machinery is installed or used upon them.

Deductions for Rates, Taxes, &c.

The amount of the income tax itself cannot be deducted (*z*); but there seems to be no reason why tenant's rates and taxes in respect of the land occupied by the concern should not be deducted, even though they are payable by the landlord under agreement with the tenant, or because he is himself the occupier (*a*); the same may be said of any composition for tithes (*a*) and unredeemed land tax, drainage rates and private expenditure on sea walls and embankments (*b*).

Change of Possession.

Where the possession or interest of the person to be charged has commenced within the period upon which the profits are to be computed under Rules 1, 2 and 3 of

(*x*) See last note.

(*y*) Cf. *Usher's Wiltshire Brewery* v. *Bruce*, [1915] A. C. at p. 468, *supra*, p. 75.

(*z*) *Ashton Gas Co.* v. *A.-G.*, [1906] A. C. 10, and the cases cited in connection with it, *infra*, pp. 243—246.

(*a*) Sched. A, No. IV. r. 1 (a), *supra*, p. 41. As to Scotland, see Sched. A, No. V. r. 4.

(*b*) Sched. A, No. V. r. 1 (e), (f), (g), *supra*, p. 42.

No. III. (*c*), and the statement of profits for that period cannot therefore be made out, the profits of one year are to be estimated in proportion to the profits received within the time that has elapsed since the commencement of that possession or interest (*d*). This does not mean that whenever there has been a change of possession or interest within the period, the directions as to computation of profits in Rules 1, 2 and 3 are to be abandoned; it must also be shown that for that reason, no account could be made out; and that was held not to have been shown where a partnership had been turned into a limited company, in which all the shares were held by the partners (*e*).

Where since the change of ownership a loss has occurred due to some specific cause within the meaning of Schedule D, Cases I. and II., Rule 11 (*f*), that rule has been held to apply to concerns in No. III. of Schedule A (*g*).

To what extent Public Undertakings are taxable.

It has already been observed (*h*) that the exemption of the Crown from income tax under Schedule A extends to property occupied for the purposes of the Crown, that is, for the general administration of the country, but no further, and that it does not protect municipal or other public undertakings. The true principle, upon the analogy of the poor rate cases (*h*), is that "if the fund is in its nature subject to taxation, it remains so subject, notwithstanding its proceeds are to be applied to public purposes, and the proceeds which are to be so applied are what remains after discharging the burden [*i.e.*, the income tax] to which it is subject" (*i*). Accordingly, profits derived by a municipal corporation from market dues (*k*) or coal

(*c*) *Supra*, p. 70.
(*d*) Sched. A, No. III. r. 9, *infra*, p. 411.
(*e*) *Ryhope Coal Co., Ltd.* v. *Foyer* (1881) 7 Q. B. D. 485.
(*f*) *Infra*, p. 170.
(*g*) *Inland Revenue* v. *Farie* (1878), 6 R. 270; *Ryhope Coal Co., Ltd.* v. *Foyer, ubi sup.* These cases are further discussed in relation to that rule, *infra*, p. 168.
(*h*) *Vide supra*, pp. 36—38.
(*i*) *A.-G.* v. *Black* (1871), L. R. 6 Ex. 78, 308, per BLACKBURN, J., at p. 310.
(*k*) *A.-G.* v. *Scott* (1873), 28 L. T. 302.

dues (*l*) are taxable under No. III. of Schedule A; but a local authority is not taxable for a poor rate or other local rate, because such rates are not property, neither are their proceeds profits. Thus a local authority is not taxable upon the proceeds of a compulsory water rate leviable in respect of all houses within its district (*m*); but it is liable in respect of the proceeds of non-compulsory rates levied upon those who take the water outside its district (*n*), and in respect of receipts for the supply of water by agreement for non-domestic purposes (*o*), for in both these cases the water is supplied by agreement and the proceeds or receipts (after deduction of expenses) are in fact profits upon the sale of water. Upon the same principle, a municipal corporation is taxable upon the profits derived from supplying gas to private consumers (*p*), and may not deduct against these profits the cost incurred in lighting its streets (*q*). In short, a local authority owning any of the concerns included in No. III. of Schedule A, such as a waterworks, is chargeable only upon its actual trading profits: but (although it cannot set off the expenses of that part against trading profits) it is not taxable in respect of any part of its undertaking by which it earns no profit. The fact that it carries on that part in the discharge of a statutory duty, such as a duty to supply water for domestic purposes without payment other than a compulsory rate, does not make it taxable for that part if the concern is within No. III. But there is here a curious anomaly, for a local authority owning any undertaking which is not described in No. III., such as a sewer, is taxable on the annual value of the whole, estimated according to the general rule in No. I.,

(*l*) *A.-G.* v. *Black*, *ubi sup.*

(*m*) *Glasgow Water Commissioners* v. *Inland Revenue* (1875), 2 R. 708; 1 Tax C. 28; see *Mersey Docks* v. *Lucas*, 8 A. C. per Lord BLACKBURN at pp. 911, 912. The effect of each of the above cases has been recently discussed by ROWLATT, J., in *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484.

(*n*) *Miller* v. *Glasgow Water Commissioners* (1886), 13 R. 489; 2 Tax C. 131; *Dublin Corporation* v. *M'Adam* (1887), 20 L. R. Ir. Ex. 497; 2 Tax. C. 387.

(*o*) *Miller* v. *Glasgow Water Commissioners*, *ubi sup.*

(*p*) *Inland Revenue* v. *Glasgow Gas Comrs.* (1876), 3 R. 857; 1 Tax C. 122.

(*q*) *Dillon* v. *Corporation of Haverfordwest*, [1891] 1 Q. B. 575.

notwithstanding that it is equally under a statutory duty, and equally levies its expenses out of compulsory rates (*r*).

On the other hand, where profits have been made, a statutory direction that they shall be devoted to public purposes (whether specific or general) does not exempt those profits from taxation (*s*); for "there is nothing in the nature of things, nothing in the words of the Act to say that when an income has been actually earned, when an actual profit upon which the tax is put has been earned and received by any person or corporation, Her Majesty's right to be paid the tax out of it in the least degree depends upon what they are to do with it afterwards, except in certain excepted cases such as charitable trusts and some others" (*t*). That is the broad ground of the decision in *Mersey Docks* v. *Lucas;* but it was rested also upon what is now Rule 5 of No. III. (*u*). A further point was also decided, namely, that a direction in a local Act that the proceeds are to be devoted to certain purposes does not make it unlawful to pay income tax out of the proceeds (*x*).

In reference to certain concerns included in No. III. of Schedule A (*y*), it has been held that express exemptions in local Acts from payment of taxes apply to the income tax.

(*r*) *Ystradyfodwg, &c. Main Sewerage Board* v. *Bensted,* [1907] A. C. 264; *supra,* p. 39.

(*s*) *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 891.

(*t*) *Ibid.*, per Lord BLACKBURN at p. 910; the distinction between expenses incurred in earning profits, and expenditure of profits after they are earned, has again been emphasized recently by the House of Lords in *Port of London Authority* v. *Orsett Union,* [1920] A. C. 273. On the same principle a burial board is taxable though its profits go in relief of the poor rates: *Paddington Burial Board* v. *Inland Revenue* (1884), 13 Q. B. D. 9, *infra,* p. 90.

(*u*) *Supra,* p. 76.

(*x*) *Mersey Docks* v. *Lucas,* per Lord SELBORNE at pp. 901, 902; see also *Corporation of Dublin* v. *M'Adam,* 20 L. R. Ir. Ex., per PALLES, C.B., at p. 515; *Dillon* v. *Corporation of Haverfordwest,* [1891] 1 Q. B., per POLLOCK, B., at p. 581.

(*y*) An inland navigation, in *Stewart* v. *Thames Conservators,* [1908] 1 K. B. 893; a ferry, in *Pole-Carew* v. *Craddock,* [1920] 3 K. B. 109; *infra,* p. 275. Cf. *Argyll (Duke)* v. *I. R.* (1913), 7 Tax C. 225.

Quarries.

Quarries of stone, slate, limestone or chalk are to be assessed under Rule 1 on the profits of the preceding year; mines of coal, tin, &c., "and other mines" under Rule 2 on an average of five years; alum mines are assessed under Rule 3 (*z*). The distinction between quarries and mines in these rules is not "between the modes of working, but between the materials raised"; and accordingly where slate was got entirely by underground workings, levels having been driven into the hillside, the owners of the workings were held to be assessable under Rule 1 and not under Rule 2 (*a*).

Mines.

The mines which are to be taxed under Rule 2 (*b*) appear to include mines of all kinds in the United Kingdom, except alum mines which are specifically mentioned in Rule 3 (*b*). They are to be assessed on the yearly profits over the five preceding years, except in cases where the mine is decreasing in annual value from some unavoidable cause (*c*). In such a case, where the decrease is proved to be such that the five years' average will not give a fair estimate of annual value, the General Commissioners may take the profits of the last preceding year as the annual value, subject to a certain abatement (*c*); and if the mine is proved to have wholly failed (*e.g.*, if it is quite exhausted or drowned out) they may discharge the assessment altogether. Several of the decisions in which the application of the rules in Schedule D to the com-

(*z*) The rules set out *supra*, p. 69.

(*a*) *Jones* v. *Cwmorthen Slate Co., Ltd.* (1879), 5 Ex. D. 93. The question whether a quarry worked without a view to the sale of the materials raised is taxable under No. I. or No. III. is discussed *supra*, p. 39.

(*b*) *Supra*, p. 69. A dead rent on unworked minerals is taxable under No. II., and not as a mine under No. III.: *Hill* v. *Gregory*, [1912] 2 K. B. 61, *supra*, p. 66.

(*c*) Rule 2, provisos, *infra*, p. 410. As to abatement in cases of loss, *vide infra*, p. 170.

putation of profits under No. III. of Schedule A has been discussed have been pronounced with regard to mines (*f*).

A special rule provides for the case of adventurers' mines (of which the leading examples are the cost-book tin-mines in the Duchy of Cornwall) and allows each adventurer to have a separate assessment of his profits if he desires, and to set off against the profits on his share in one such mine the loss on his share in any other (*g*).

Mines: Capital Deductions disallowed.

It is a fundamental principle that in computing profits for income tax purposes, no deduction is allowed for capital expenditure (*h*). Attempts of various kinds have been made to avoid the application of this principle to mines; they have all failed. The simplest of these was a claim to deduct the actual value of the coals exhausted during the year from the receipts obtained by selling that coal (*i*). In the leading case, it was held that a mine owner cannot write off and deduct from the gross earnings of his mine in a particular year, a sum to represent that year's depreciation of all the pits in the mines wherever sunk (*k*); the claim disallowed was arrived at by taking so much per ton on iron made and coal sold during the year, estimated as representing that proportion of the capital expended on making bores and sinking pits which had become exhausted by the year's working. It may be proper to write off such an amount from the books of a trader or a trading company in order to ascertain what sum can be safely distributed or spent as profits; but that does not justify a deduction in ascertaining the profits for income tax purposes (*l*). Profits in this connection mean "the entire

(*f*) *Supra*, pp. 71—75.

(*g*) Sched. A, No. III. r. 7; cf. *Morant* v. *Wheal Grenville Co.*, *infra*.

(*h*) As to depreciation of machinery and plant, *vide infra*, p. 158.

(*i*) *Inland Revenue* v. *Farie* (1878), 6 R. 270; *supra*, p. 78.

(*k*) *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315, *supra*, p. 71, overruling *Knowles* v. *M'Adam* (1877), 3 Ex. D. 23. The same result had been arrived at in *Addie* v. *Inland Revenue* (1875), 2 R. 431; 1 Tax C. 1.

(*l*) 6 A. C. 315, per Lord CAIRNS, L.C., at p. 324.

profit derived from the 'mine,' deducting the cost of working it, but not the cost of making it" (*m*).

The House of Lords in that case expressly refrained from laying down that money expended in sinking pits can never be in the nature of current expenses, and from saying in what circumstances (if any) such expenditure might give rise to a deduction for income tax purposes (*n*). It was sought to make out that such circumstances existed in the case of a cost-book mine; where it was contended that there was no capital because, under the peculiar method of management prevailing in the Stannaries, all outlay has to be deducted before any profit can be distributed; the money sought to be deducted was not past expenditure, but had been spent on sinking a new shaft within the years on which the average profits were to be calculated. The Court held that the way in which the accounts were kept made no difference; but ordered a further enquiry into the question of fact whether in the mine concerned the sinking of such a shaft would be so frequently and ordinarily necessary as to be part of the ordinary working expenditure (*o*). Where an old shaft in a practically exhausted tin mine had been lengthened so as in effect to open up a new mine, a deduction of the expenditure (incurred within the period of averaging) was also disallowed (*p*).

Antecedent losses cannot be deducted, even if they are incurred in the course of working the mine; and therefore, where a dead rent and royalties were payable with a clause providing that no greater sum than the dead rent should be paid in any year until the amount previously paid as dead rent should be recouped out of royalties, it was held that no deduction could be claimed by the lessees

(*m*) Per Lord PENZANCE at p. 326.

(*n*) 6 A. C. per Lord CAIRNS, L.C., at p. 324; per Lord BLACKBURN at p. 339.

(*o*) *Morant* v. *Wheal Grenville Mining Co.* (1894), 3 Tax C. 298. The result of the enquiry does not appear in the report.

(*p*) *Bonner* v. *Basset Mines, Ltd.* (1912), 6 Tax C. 146. See also decisions on claims for capital deductions in the cases of harbours and railways, *infra*, pp. 88, 90.

for the excess (over the dead rent) of royalties which would have been paid but for this clause, but which they in fact retained to recoup themselves for payments of dead rent made before they began to work the minerals. The sum represented by the dead rent itself and the excess sum that would have been payable but for that clause, both formed part of the profits (*q*).

Ironworks.

A claim to deduct depreciation of buildings and machinery in the case of ironworks has been disallowed (*r*); and so far as buildings are concerned, this decision is doubtless good law; but the case arose before even the Customs and Inland Revenue Act, 1878, was passed, sect. 12 of which allowed a deduction for depreciation of machinery or plant; and now that that enactment has been replaced by a rule inserted among the rules applicable to Schedule D, it is submitted that such a deduction is proper with regard to the machinery or plant of an ironworks (*s*).

Municipal Concerns: Gasworks and Waterworks.

A municipal corporation is taxable under Rule 3 of No. III. in respect of many of its sources of revenue, whether on the net receipts of trading concerns (*t*) or on the net proceeds of market and other dues received under statute or charter. In calculating the profits it can deduct the expenses necessary to earn the particular receipts in question, but not those of general administration (*u*).

It has already been seen that a municipal corporation is taxable upon the profits derived from its gasworks, and may not set against them the expenses incurred in lighting

(*q*) *Broughton Coal Co.* v. *Kirkpatrick* (1884), 14 Q. B. D. 491. The prohibition against deducting payments to the landlord is referred to, *supra*, p. 76.

(*r*) *Addie* v. *I. R.*, *supra*, p. 82.

(*s*) *Vide supra*, p. 74.

(*t*) But for some reason unknown to the writer, tramways are assessed under Sched. D, *vide infra*, p. 160. Surely, a tramway is a "concern of the like nature" with a railway.

(*u*) *Vide infra*, p. 86.

the streets (*x*). The deduction from such profits of a sum paid annually into a sinking fund to restore certain imperfect portions of the plant has been disallowed (*y*); but for the reasons given above with regard to ironworks, a deduction of the same nature, though in a different form, would probably now be permissible.

As in the case of a gasworks, so in that of a waterworks, a local authority is liable to be taxed on the profits made. These profits do not include the proceeds of a compulsory rate made on all the houses within the area of the authority's jurisdiction, whether those houses take the water or not (*z*). But in the more ordinary case where the liability to payment of the water rate (which is not here really a rate at all, but the price of water sold) or water rent depends on the exercise of an option to take the water, the payments received are taxable profits whether they are earned outside the authority's jurisdiction (*a*), or within it (*b*), and whether the payment is for a domestic supply and calculated on rateable value (*b*) or for a non-domestic supply by meter (*a*). And if the payment is in fact made by agreement, it is to be included in the profits, even though the payer may have a legal claim to receive the water without entering into an agreement (*c*).

A rural district council supplying water to several "contributory places" within its district carries on a separate concern with regard to each of those places, and the profits of each must be ascertained separately (*d*); the question whether it can now set off a loss upon one of these concerns against the profits made on another has already been discussed (*d*).

(*x*) *Inland Revenue* v. *Glasgow Gas Commrs.*; *Dillon* v. *Corporation of Haverfordwest*, *supra*, p. 79.

(*y*) *Clayton* v. *Newcastle-under-Lyme Corporation* (1888), 2 Tax C. 416.

(*z*) *Glasgow Water Commrs.* v. *Inland Revenue* (1875), 2 R. 708; 1 Tax C. 28, *supra*, p. 79.

(*a*) *Miller* v. *Glasgow Water Commrs.* (1886), 13 R. 489; 2 Tax C. 131, *supra*, p. 79.

(*b*) *Mullingar R. D. C.* v. *Rowles*, [1913] 2 Ir. R. 44; 6 Tax C. 85.

(*c*) *Allan* v. *Hamilton Waterworks Commrs.* (1887), 24 S. L. R. 360; 2 Tax C. 194.

(*d*) *Wakefield R. D. C.* v. *Hall*, [1912] 3 K. B. 328, *supra*, p. 73.

Other Municipal Revenues: Markets.

Coal dues given by a local Act to a municipal corporation and leviable on every chaldron of coals brought into the town have been held taxable in the hands of the corporation; although these dues were in fact paid into a common fund for the improvement of the town, the Courts rejected the contention that they were analogous to a local rate; their incidence was not in fact confined to the inhabitants of the town, and they were of the nature of harbour or market dues (*e*).

A city corporation is taxable in respect of its receipts from markets, and cannot charge against them the general expenses of its establishment or of the civil government of the city; the receipts from each source of municipal revenue are to be kept separate and its expenses of earning it charged separately against the receipts from that source (*f*). These observations apply equally to miscellaneous revenues, such as fines for renewals of leases, burgess fines, and so on (*g*). Probably the loss on one municipal concern may now be set against the profit of another (*h*); but that will not allow general expenses of administration to be set against the receipts of a revenue-bearing concern (*i*).

So far as "customs" tolls leviable in burghs in Scotland are applied in the burgh in defraying expenses of paving, lighting, cleansing or police, or of similar public burdens, repayment of tax may be claimed (*j*).

(*e*) *A.-G.* v. *Black* (1871), L. R. 6 Ex. 78, 308, *supra*, p. 78.

(*f*) *A.-G.* v. *Scott* (1873), 28 L. T. 302; *In re Birmingham Corporation* (1875), 1 Tax C. 26; (these two cases were decided before the effect of the Revenue Act, 1866, had been made clear in *Coltness Iron Co.* v. *Black*, *supra*, p. 72); *Adam* v. *Maughan* (1889), 27 S. L. R. 64; 2 Tax C. 541, *supra*, p. 38. The slaughter-house dealt with in the last-named case was afterwards held to be taxable under No. I. of Sched. A, and not under No. III.: *Harris* v. *Edinburgh Corporation*, *supra*, p. 39.

(*g*) *A.-G.* v. *Scott*, *ubi supra*; *Webber* v. *Glasgow Corporation* (1893), 30 S. L. R. 255; 3 Tax C. 202.

(*h*) *Vide supra*, p. 73.

(*i*) See, however, the cases decided on deduction of income tax in relation to municipal revenues, *infra*, p. 191.

(*j*) The repayment must be claimed, and the facts proved, before the Special

Inland Navigations.

The "inland navigations" referred to in Rule 3 are those "which own the property over which the navigation takes place so that the profits arise out of lands or hereditaments"(*k*); the fact that the navigation is that of a tidal estuary does not take it out of the "inland" category. Accordingly, the Humber Conservancy Board (who admitted that they were taxable under that rule as regards their receipts from tolls)(*l*), were held also liable to bring into their receipts contributions payable to them under their local Act by four railway companies and another navigation authority, each having an interest in the Humber, and to be taxable under Rule 3 on the balance after deduction of expenses. These contributions were not analogous to a rate(*k*).

Harbours and Docks.

Although docks are specifically mentioned in Rule 3 and ports and harbours are not, the words "tolls" and "other concerns of the like nature" appearing in that rule are wide enough to make a harbour, port or dock authority taxable as well in respect of rates and dues paid for the use of the docks or other hereditaments vested in the authority, as in respect of port or harbour rates or dues and so on, which are paid for the use of the port or the harbour and are unconnected with any corporeal hereditament. Dues of both kinds formed the subject-matter of *Mersey Docks and Harbour Board* v. *Lucas*(*m*), where the Board

Commissioners, sect. 35, *infra*, p. 352. The claim must be made within three years after the year of assessment to which it relates, sect. 41, *infra*, p. 355.

(*k*) *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449; distinguishing *Glasgow Water Commrs.* v. *Inland Revenue* (1875), 1 Tax C. 28, *supra*, p. 85. The decision is not very strong in its bearing on No. III. of Sched. A, because it was held that the Board were in the alternative taxable under Sched. D in respect of these contributions. A contrary result was reached under Sched. D in the case of a fishery board: *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484, *infra*, p. 222. As to exemption under a local Act, cf. *Stewart* v. *Thames Conservators*, [1908] 1 K. B. 893, *infra*, p. 276.

(*l*) See Rule 3 of No. III., *infra*, p. 410.

(*m*) (1883), 8 A. C. 891; the principles laid down by the House of Lords in coming to this decision are indicated *supra*, p. 80. Cf. also *A.-G.* v. *Black*, L. R. 6 Ex. at pp. 310, 311, *supra*, p. 78.

were held to be taxable on the profits from those dues, although they were bound to apply to the repayment and extinction of loans and annuities any surplus arising therefrom after payment of expenses and of interest. It makes no difference that the profits from the dues are by statute handed over as a whole by the harbour authority to a borough corporation for payment of interest and principal in respect of a loan raised by the corporation (*n*).

Money devoted to the repayment of a debt incurred in previous years for the substitution of a number of screw moorings for mooring chains which had been taken up in order to enable the harbour to be dredged, was allowed as a deduction, on the ground that the money had been expended in the renewals of works (*o*). The report is very meagre; and the weight of the decision is doubtful in view of the cases since decided with regard to capital deductions (*p*).

Much more recently, it has been held that the silting of a harbour does not give rise to an allowance for depreciation under sect. 12 of the Customs and Inland Revenue Act, 1878 (*p*); and that expenses of dredging a harbour (which were admitted by the Crown for the purposes of the case to be deductible in ascertaining the profits as sums expended for "repairs" within the meaning of what is now Rule 3 (d) of the rules under Schedule D, Cases I. and II.) (*q*), must be deducted against the profits of the particular year only in which they are incurred (*r*).

In that case it was laid down that if (as was admitted by the appellants) the profits were to be ascertained on the one preceding year and not upon an average of

(*n*) *Sowrey* v. *King's Lynn Harbour Mooring Commrs.* (1887), 2 Tax C. 201, applying *Mersey Docks* v. *Lucas*, and *A.-G.* v. *Black* (1871), L. R. 6 Ex. 208, *supra*, p. 86. The dues in that case were shipping dues levied equally on all vessels coming into the port.

(*o*) *Hall* v. *King's Lynn Harbour Mooring Commrs.* (1875), 1 Tax C. 23.

(*p*) *Supra*, p. 82, and *infra*, p. 152. As to allowances for depreciation, *vide supra*, p. 84.

(*q*) *Infra*, p. 434.

(*r*) *Dumbarton Harbour Board* v. *Cox*, [1919] S. C. 162; 7 Tax. C. 147.

three years, it was inconsistent to calculate the deduction for repairs on a three years' average; but it is submitted that there is not necessarily any inconsistency here, because there are many kinds of repairs which have to be undertaken only once in three years—if so often—and which should be averaged out so as to obtain a true annual value; annual value is, it is true, by Rule 3 of No. III., "understood to be the profits of the preceding year" (*s*); but those profits are to be ascertained "according to the rules applicable to Schedule D," only "so far as the same are consistent" with the rules of No. III. (*t*). There would, however, be a real inconsistency in applying to concerns like harbours the prohibition contained in Schedule D against deducting repairs on an average of more than three years (*u*).

The true view (it is suggested) is that any expenses of repairs deductible under No. III. should be calculated over whatever period is reasonable in view of the nature of the hereditament, and that the period over which the profits are to be calculated does not affect the matter (*x*).

Railways.

Decisions on the assessment of railways to income tax are curiously rare. Where a railway company (during the year on which the profits are calculated) runs a steamboat service under statutory powers, the railway and steamboat services form a single undertaking, the net profits of which are to be ascertained as a whole, and therefore any loss on the steamers is deductible against the profit earned on the railway lines (*y*). The cost incurred in bringing up a

(*s*) Rule 3, *supra*, p. 69.

(*t*) Rule 8, *supra*, p. 71, where the effect of this rule is discussed.

(*u*) Sched. D, Cases I. and II. r. 3 (d), *infra*, p. 434.

(*x*) Lord STRATHCLYDE, L.P., took the view that the money expended was really capital, though he decided the case on the admissions made.

(*y*) *Highland Rail. Co.* v. *Special Commrs.* (1885), 13 R. 199; 2 Tax C. 151; the deduction for loss included both loss on working and loss by depreciation (*vide supra*, p. 84), and it was held to make no difference that the company did not carry on the steamer service in the year of assessment. The form of the special case is somewhat confusing, as it appears in the reports.

branch line to the standard of a main line, and the extra cost incurred in replacing worn iron rails and chairs by steel rails and heavier chairs (over and above the cost of replacing by rails and chairs of the same kind as those taken up) are capital charges and are not admissible as deductions (*z*). But the practice of deducting year by year the expense of renewing worn-out parts by parts of the same kind is unobjectionable (*a*); though it may lead to difficulty in securing a proper allowance for depreciation when larger replacements or renewals have to be made (*a*).

Burial Grounds and Cemeteries.

There is a liability to income tax in respect of the receipts earned by carrying on places of burial for profit, whether by a burial board which has a public duty to provide a burial ground, or which devotes its profits to public purposes (*e.g.*, in relief of rates) (*b*), or by a cemetery company which distributes the profits among its shareholders. Such a company is in the actual possession or occupation of its cemetery, and is therefore taxable under Rule 3 of No. III. of Schedule A, and not under Rule 7 of No. II. (*c*). The fact that it gradually parts with its capital by selling in perpetuity rights to the exclusive use of specified portions of its land for graves does not entitle the company to make a deduction from its annual profits of any sums which it may set apart for the redemption of the capital invested by it in the purchase of the grave-spaces sold during the year, although that may be a proper method of framing the balance-sheet (*d*).

(*z*) *Highland Rail. Co.* v. *Special Commrs.* (1889), 16 R. 950; 2 Tax. C. 485. Similar points with regard to mines and harbours are discussed *supra*, pp. 82, 88.

(*a*) See last case; *Caledonian Rail. Co.* v. *Banks*, *infra*, pp. 158, 159; *London County Council* v. *Edwards*, *infra*, pp. 158, 160.

(*b*) *Paddington Burial Board* v. *Inland Revenue* (1884), 13 Q. B. D. 9; *Portobello Town Council* v. *Sulley* (1890), 37 S. L. R. 863; 2 Tax C. 647.

(*c*) *Edinburgh Southern Cemetery Co.* v. *Kinmont* (1889), 17 R. 154; 2 Tax C. 516.

(*d*) *Ibid.*, following *I. R.* v. *Farie* and *Coltness Iron Co.* v. *Black*, *supra*, pp. 82, 83. The quotation from Lord McLaren on p. 75, *supra*, shows the principle upon which this deduction was disallowed; a distinction is drawn for income tax purposes between the carrying on of a business and an isolated transaction, each of which involves parting with capital, *vide infra*, p. 152.

It has been held in Scotland to follow from that decision, and from the cases on which it is based, that a cemetery company cannot deduct against the receipts from rights of burial in perpetuity sold during the year the expenses in perpetuity of keeping in order the grave-spaces concerned (*e*).

The contrary has been held in England, and LUSH, J., said, with regard to the Scottish decision:

"I confess . . . . that I cannot see how the case of a cemetery company selling its sites for use in perpetuity, as in the *Edinburgh* case (*f*), is the same as that of a cemetery company which charges certain sums to clients or customers in consideration of the company undertaking to keep in repair and decorate the graves. . . . . It seems to me that . . . . the true profit earned by the appellants is the profit that remains when they have discharged and met the expenditure they have undertaken to discharge and meet in consideration of the payments, and although . . . . the sums received are income and not capital, yet it would be wrong to treat the whole of the moneys received as profit or money earned; but against the payments which the appellants receive ought to be set off the expenses they will incur in order to earn the money so paid" (*g*).

It is submitted that, for the reasons given by LUSH, J., the English decision is correct.

(*e*) *Paisley Cemetery Co.* v. *Reith* (1898), 25 R. 1080; 4 Tax C. 1.

(*f*) *Edinburgh Southern Cemetery Co.* v. *Kinmont*, *ubi supra*.

(*g*) *London Cemetery Co.* v. *Barnes*, [1917] 2 K. B. 496. In neither case, although they contracted to keep the grave-spaces in order for all time, was there any obligation on the company to set aside the capital sums received for the purpose.

CHAPTER IV.

INCOME TAX ON OCCUPATION OF LAND: SCHEDULE B.

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Scope of Schedule B.

The tax as charged under Schedule B is a tax in respect of the occupation of certain classes of land. It is sometimes called "the farmer's income tax"; but the name is misleading, for the tax applies to many classes of land other than agricultural land. The form of the Schedule (*a*) is most confusing; on the face of it, it applies to all lands, &c. precisely as Schedule A does. But when Rule 1 (*a*) with its proviso is read into the Schedule itself, it is found that the Schedule applies only to the lands, &c. assessed under the General Rule (*b*) No. I. of Schedule A, and that two large and important classes of lands (taxed under that rule) are excepted from the purview of Schedule B. This Schedule, then, does not affect—

(a) any of the profits issuing out of lands which are taxed under No. II. of Schedule A (*c*);

(b) any of the concerns taxed under No. III. (*d*);

(c) any dwelling-house (with its domestic offices) (*d*) that is not a farmhouse;

(d) any warehouse or other building occupied for a trade or profession.

It is somewhat unsafe, therefore, to attempt to describe the scope of this Schedule otherwise than by the use of negatives; but it may be stated broadly that it applies to all agricultural land, including a farmhouse let with it

(*a*) *Infra*, p. 409.
(*b*) See Chap. II.
(*c*) See Chap. II., pp. 62—67.
(*d*) See Chap. III.

under the same tenancy and a house let under the same tenancy with a farm of tithes, to woodlands (*e*), to deer forests (*f*), to "amenity lands" in general, and to all those miscellaneous hereditaments (not being dwelling-houses (*g*) or premises used for a trade or profession) taxed under No. I. of Schedule A. It does not apply to a dwelling-house occupied by a person who farms only his own lands, or even by a tenant-farmer who occupies his house under a different lease or agreement from that under which he occupies his farm, although he holds both of the same landlord, for the house (to be included) must be occupied with the farm "by virtue of one and the same demise." On the other hand, Schedule B tax is leviable in respect of such properties as a main sewer or a municipal office, which have been held not to be taxable under No. III. of Schedule A, but under the General Rule (*h*). Where Schedule B applies, tax is levied under it in addition to that levied under Schedule A.

Persons chargeable.

The tax is charged upon the occupier; and Rules 1—5 of No. IV. of Schedule A are applied to the tax charged under Schedule B (*i*). What has been said (*k*) as to the effect of those rules with regard to the charge upon the occupier, to unoccupied lands, and to changes of occupation, may therefore be read as applying also to the charge under Schedule B; and the argument that there is no charge on unoccupied lands applies with greater force to Schedule B, which imposes the tax on the occupation and not on the property.

(*e*) Rule 7, *infra*, p. 426.

(*f*) *Middleton* v. *L.-A.* (1876), 3 R. 599, *infra*, p. 96.

(*g*) The exception for dwelling-houses carries with it an exception for the "domestic" offices only belonging to the house; but the other exception for premises occupied for a trade or profession will exclude many of the buildings which have been (somewhat strangely) brought within the scope of the inhabited house duty as "belonging to and occupied with" an inhabited house, *e.g.*, the private-school chapel in *Browne* v. *Furtado*, [1903] 1 K. B. 723.

(*h*) *Vide Ystradyfodwg, &c. Main Sewerage* v. *Bensted; Harris* v. *Edinburgh Corporation*, and the cases cited with them, *supra*, p. 39.

(*i*) Sched. B, r. 4, *infra*, p. 426.

(*k*) *Supra*, pp. 49—54.

The tax is leviable in addition to that leviable under Schedule A, so that an owner occupying his own land pays tax under both Schedules; but if the land is occupied by a tenant, the latter has no right to deduct Schedule B tax against his landlord (*l*). He has, however, the same right or duty to deduct tax on payments of yearly interest, annuities, and other annual payments as any other payer of income tax (*m*).

Basis of Assessment under Schedule B.

The assessment is made on the annual value in the case of lands not used solely or mainly for husbandry, and on twice the annual value where the lands are so used (*n*). The annual value is to be assessed on the same principles as for Schedule A (*o*), subject to "modifications" in two exceptional cases (*p*). In the County of London, however, the valuation list in force is binding for Schedule B as it is for Schedule A (*q*); and outside it, the Finance Acts usually provide for re-assessment only once in every five or six years (*r*).

Schedule B, however, covers only profits arising in respect of the occupation of agricultural lands, and other lands with its purview; and it is a question of fact in each case whether the whole of the profits made by the occupier have any necessary relation to the lands (*s*). If a farmer keeps a stallion on his farm to serve mares for the

(*l*) The right to deduct tax under Sched. A is discussed *supra*, p. 55.

(*m*) Under General Rules 19 and 21, *infra*, p. 455.

(*n*) Sched. B, *infra*, p. 424. This division is further discussed *infra*, p. 97. The expression "assessable value" is used in the opening paras. of Sched. B merely for drafting purposes, and means nothing more than once, or twice, the annual value, as the case may be.

(*o*) *Vide supra*, pp. 40—47.

(*p*) Sched. B, r. 2 (a) (b), read with Rule 11 of No. IV. of Sched. A, *infra*, p. 413. Neither of these cases is likely to be of very common occurrence, for agricultural tenants do not often take up their landlords' burdens, or contract to pay a higher rent in advance for their own future improvements; and in any event the so-called "modifications" are merely illustrations of the general principle of ascertaining annual value, *vide supra*, p. 47.

(*q*) *Vide supra*, p. 48.

(*r*) Cf. *supra*, p. 47.

(*s*) *Malcolm* v. *Lockhart*, [1919] A. C. 463; cf. *Earl of Derby* v. *Aylmer*, [1915] 3 K. B. 374, *infra*, p. 158.

public, and makes profits in that way, he may be taxable under Schedule D for those profits, in addition to his liability under Schedule B (*s*).

Where lands within the scope of Schedule B are occupied by a dealer in cattle or a dealer in or seller of milk, and the lands are found by the Commissioners to be insufficient for the keep of the cattle brought on to them, they may make an estimate under Schedule D of the profits of the business in cattle or milk as the case may be, and charge the occupier under Schedule D upon the balance of the profits over and above the sum (equal to twice the annual value) upon which he is taxed under Schedule B (*t*). If strictly applied, this rule would allow an additional assessment to be made under Schedule D in any dairy or grazing farm where the cattle are fed on cake or any other purchased article; but it is not so applied in practice. The rule at any rate prevents a grazier, dairyman or milk seller who feeds his cattle on accommodation land for part of the time that they are on his hands, from claiming that he need not pay tax on more than twice the annual value of that land; he is liable to pay on the whole profits of his trade for the income-tax year or the account year preceding the year of assessment (*u*).

Nurseries and gardens for the sale of produce are assessed, not according to annual value, but on the profits estimated as under Schedule D; this rule does not apply to hop gardens (*x*).

An occupier (as owner or otherwise) of lands for the

(*s*) See note (*s*), opposite page.

(*t*) Sched. D, Case III. r. 4, *infra*, p. 442.

(*u*) Sched. D, Case III. r. 2, *infra*, p. 441.

(*x*) Sched. B, r. 8, *infra*, p. 427. A private garden from which produce is occasionally sold does not appear to come within this rule, cf. *Bickerdike* v. *Lucy*, [1920] 1 K. B. 707, where such a garden was held not to be a "market garden" within the Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46), s. 17 (1). There is a somewhat similar provision applying the rules of Sched. D to No. III. of Sched. A, *supra*, p. 71; but in the present case the rules of Sched. D. clearly override those of Sched. B, and it is difficult to see what purpose is served by keeping the assessment of lands of this class under Sched. B as rule 8 expressly does. These lands are, of course, not liable to be taxed twice over under *both* Schedules B and D.

purpose of husbandry only, who shows at the end of the year of assessment that the profits from his occupation have fallen short of twice the annual value, may be assessed on his actual profits (*y*).

Losses by flood or tempest are allowed for as under Schedule A (*z*).

The deduction in respect of expenses allowed generally to clergymen and ministers of religion (*a*) applies to assessments made upon them under Schedule B, *e.g.*, in respect of the occupation of glebe lands.

Sporting Rights.

The annual value for purposes of Schedule B has been held (*b*) to include that of any sporting rights to which the occupier is entitled whether as owner or by lease or agreement; because annual value includes the value of sporting rights (*c*), at any rate when they are not severed from the occupation of the land (*d*). Thus, the tenant of a deer forest was held liable in respect of the annual value of the forest, that is, of the rent paid for it, including the privilege of killing deer; he claimed that nothing beyond the value of the land as if it were a sheep-farm could be taxed as profits (*e*). In that case the tax was not demanded in respect of the grouse-shooting, which was let to the same tenant; but it was afterwards held that a farming tenant who was also the tenant of shooting rights over his farm was taxable upon the annual value of the farm as

(*y*) Sched. B, r. 6, *infra*, p. 426. The General Commissioners are to be the judges; where the tax has already been paid, the rule provides for repayment.

(*z*) Sched. B, r. 3, *infra*, p. 426; *vide supra*, p. 45.

(*a*) General Rules, r. 2 (1) (a), *infra*, p. 451.

(*b*) The cases happen to have arisen under Sched. B; but they are equally applicable to the General Rule of Sched. A, *supra*, p. 41.

(*c*) Cf. the poor rate decisions in *R.* v. *Williams* (1854), 23 L. T. (O. S.) 76; *R.* v. *Battle Union* (1866), L. R. 2 Q. B. 8.

(*d*) In the poor rate case of *R.* v. *Thurlstone* (1859), 1 E. & E. 502, it was held that a farming occupier was not rateable in respect of the value of the shooting rights which were reserved. The matter has been set at rest as regards poor rate by sect. 6 of the Rating Act, 1874 (37 & 38 Vict. c. 54), but this enactment does not affect annual value for income tax purposes.

(*e*) *Middleton* v. *L.-A.* (1876), 3 R. 599; 1 Tax C. 109.

well as of the shooting rights, although he held the latter under a separate lease (*f*).

Lands used for Husbandry.

In order to escape taxation under this schedule on twice the annual value, lands must (as has been seen) be proved (*g*) not to be occupied for the purposes of husbandry only, or mainly for those purposes. But the land will be taxed on twice the annual value in spite of being used for other purposes if the Commissioners of Inland Revenue refer the matter to the Department of Agriculture in England, Scotland, or Ireland and the Department certifies that such use is unreasonable (*h*).

There is no definition of husbandry in the Income Tax Acts (*i*); it has been defined as "tilling the soil and producing from it commodities for human consumption" (*k*); but this definition is not sufficiently comprehensive, for it would exclude grazing and meadowing. It is a question of fact in each case whether the occupation is for purposes of husbandry (*k*); and generally it will not be difficult to answer, though there may be an occasional case upon the border-line (*l*). A stud-farm, for instance, could scarcely be said to be so occupied; but the existence on a grazing

(*f*) *Revell* v. *Scott* (1895), 22 R. 772; 3 Tax C. 403. Angling rights were also included in the shooting lease, but do not appear to have been included in the assessment. Cf. *R.* v. *Williams*, *supra*, p. 96, where a similar decision was given with regard to annual value for poor rate.

(*g*) To the satisfaction of the (General) Commissioners concerned, either before they allow the assessment, or on appeal.

(*h*) Sched. B, *infra*, p. 424. This provision is probably aimed at cases where what should be agricultural land is turned practically into shooting preserves or rabbit warrens (even though there is some subordinate agricultural use), as well as at deer forests, *vide supra*, p. 96; note that it is not confined to cases where there is no agricultural use of the land at all.

(*i*) Nor in the following Acts where the word occurs:—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 39 (excess profits duty); Workmen's Compensation Act, 1900 (63 & 64 Vict. c. 22) s. 1 (3); Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 61.

(*k*) Cf. *I. R.* v. *William Ransom & Son, Ltd.*, [1918] 2 K. B. 709, per SANKEY, J., at pp. 712, 713.

(*l*) Thus, for the purposes of excess profits duty, a farm carried on by manufacturing chemists to supply herbs to their factory was held to be carried on for husbandry in the case last cited; and the Special Commissioners have held that the business of contractors for steam cultivation is not husbandry.

farm of one stallion hired out for service would not prevent the farm as a whole from being so occupied (*m*).

Choice between Schedules A and D.

The original idea of Schedule B is believed to have been to tax the farmer on his profits estimated by a very rough rule-of-thumb in terms of rent (or annual value), because of the difficulty of ascertaining his profits more accurately. The Schedule, however, applies to many other persons besides farmers; but a person occupying lands for husbandry only may elect to be assessed under Schedule D instead of Schedule B; he must do so by notice to the surveyor of taxes within two months after the commencement of the year of assessment (*n*). In that case his profits from the occupation of his lands will be calculated as profits of a trade under Schedule D according to the averages there laid down (*o*); it will not be to his advantage to give such a notice unless his profits so calculated are likely to be less than twice the annual value of the lands (*p*).

A similar option is given to any person occupying woodlands (*r*), who proves that they are managed by him on a commercial basis, and with a view to the realization of profits; but in this case the election once made by any person will apply as long as the woodlands are occupied by him, and must extend to all woodlands managed as above described on the same estate (*q*); any woodlands planted or replanted since 9th July, 1916, will, however, be treated for this purpose as a separate estate if notice is given within a year after the time of planting or re-

(*m*) Cf. *Malcolm* v. *Lockhart*, *supra*, p. 94.

(*n*) Sched. B. r. 5, *infra*, p. 426; as to service of notice, see para. (2) of the rule. Note that occupation "mainly" for purposes of husbandry does not give the right of option.

(*o*) *Vide infra*, p. 162.

(*p*) See "Basis of assessment," *supra*, p. 94.

(*q*) This may mean lands held by the same person under the same title and lying in a ring-fence, or all lands wherever situate held by the same person under the same title, or lands held by the same person under different titles. The Act affords no guidance.

planting (*r*). As the levy of the tax on twice the annual value does not apply to woodlands, there is no advantage in making the option unless the profits calculated under Schedule D (*s*) are likely to be less than the annual value (*t*).

In the case of land occupied for husbandry only, or of woodlands, a person who has already elected to be taxed under Schedule D and sustains loss, may obtain an adjustment of his liability by reference to that loss (*u*).

(*r*) Sched. B, r. 7, *infra*, p. 426. The directions as to procedure in this rule are obscure, and rule 5 has to be read into it. A person concerned, however, who desires to exercise the option, will probably be safe from errors of procedure if he (1) gives notice to the surveyor of taxes within two months of the commencement of the year as prescribed in rule 5 that he desires to be assessed under Sched. D, and (2) within the same time makes application to either the General or the Special Commissioners to prove the facts as to management; it appears from para. (c) of rule 7 that he must make this application every year (and is liable to have it overruled in any year) although his election once made binds him once for all. He cannot apply both to General and Special Commissioners in the same year. If he desires to have his newly planted or replanted woodlands treated as a separate estate, he must give notice for this particular purpose to the General or Special Commissioners within twelve months after the time when they are planted or replanted.

(*s*) *Vide infra*, pp. 133 *sqq*.

(*t*) See "Basis of assessment," *supra*, p. 94.

(*u*) Sect. 34, *infra*, p. 351.

CHAPTER V.

INTEREST, ETC. PAYABLE OUT OF PUBLIC REVENUES: SCHEDULE C.

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Scope of Schedule C.

INCOME tax is charged under this Schedule on all profits arising from interest, public annuities, dividends and shares of annuities payable out of the public revenue of the United Kingdom, or of any foreign state or British possession, if payable in the United Kingdom (*a*). But if the person owning any securities of a foreign state or British possession, and entitled to the interest and dividends thereon, is not resident in the United Kingdom, no tax is chargeable (*b*); the non-resident can obtain this relief, even though the securities are held under a trust, if he is the sole beneficiary in possession and can at any time call upon the trustees to make him the absolute owner (*c*).

There is no definition of "public revenue" or "public annuities," but it is the practice to levy the tax under Schedule C only upon interest, &c. payable out of the revenues of a State (*d*), interest on municipal loans being

(*a*) Sched. C, opening words: rr. 1 (a) and 2 (d), *infra*, p. 427; other profits on securities bearing interest so payable are chargeable under Sched. D, Case III. r. 1 (c), *infra*, p. 441; so also interest, &c., payable as described in the text where the half-yearly payments do not exceed 50*s*., *ibid*. r. 1 (d), *infra*, p. 428. As to foreign loans, *vide infra*, p. 103.

(*b*) Sched. C. r. 2 (d). As to the meaning of "resident," *vide infra*, p. 248.

(*c*) *Ibid*., proviso; the relief may be given by allowance or by repayment, *vide infra*, p. 322.

(*d*) The Government of India contracted to pay certain "annuities" in connection with the purchase of railway undertakings, and the Crown sought to tax these under Sched. C; but the Courts did not decide whether (so far as they were taxable at all) the tax was leviable under Sched. C or Sched. D: *Secretary of State* v. *Scoble; East Indian Rail. Co.* v. *Secretary of State, infra*, p. 188.

charged under Schedule D (*e*). Again, annuities of the nature of pensions, such as invalid annuities payable to servants of the State, or annuities payable to their widows or children by the Crown, or out of the public revenue of the United Kingdom, are taxed under Schedule E, though paid out of public revenues (*f*).

No tax is chargeable under this Schedule in respect of stock, dividends, or interest belonging to the Crown, or to the accredited minister of any foreign State resident in this country (*g*).

War Loans, &c.

On certain of the War Loans issued under Acts of 1914—17, interest is paid free of income tax; interest on these, as well as that on Exchequer Bonds issued during the great War or within six months after it, is taxable under Schedule D and not under Schedule C (*h*). Interest on War Loan Stock not exceeding 200*l.* in face value and inscribed in the Post Office Stock Register is also taxed under Schedule D (*i*).

A bank carrying on a *bonâ fide* banking business in the United Kingdom is relieved from tax under Schedule C upon interest on securities which represent subscriptions to War Loans by the bank; this interest is to be brought into the general profits of the bank for assessment under Schedule D (*k*).

(*e*) *Vide infra*, pp. 166, 191; the word "public" in Sched. C is thus treated as meaning "national"; in Sched. E it is used in a much wider sense, cf. rule 6 thereof, *infra*, p. 447.

(*f*) *Vide infra*, p. 227. Although Sched. C does not specify the public annuities that are chargeable under it, Sched. E charges the tax on annuities payable as stated in the text "other than annuities charged under Sched. C." Annuities of the nature of pensions payable in the United Kingdom not by the Crown, but out of the revenues of a foreign State or British possession, would appear to be chargeable under Sched. C. But the matter affects the method of collection rather than the amount payable.

(*g*) Sched. C, r. 2 (a) (b) (c).

(*h*) Act of 1918, s. 49 (2); Sched. D, Case III. r. 1 (f), *infra*, p. 441.

(*i*) Sect. 49 (1).

(*k*) Sched. C, r. 3, *infra*, p. 428. The Special Commissioners must be satisfied that the securities represent such subscriptions.

No tax is levied in respect of interest on securities issued before 6th April, 1919, by the Treasury as being tax free, while they are in the beneficial ownership of persons not ordinarily resident in the United Kingdom (*l*). This exemption covers securities so issued forming part of the "foreign life assurance fund" of an assurance company if the income is applied or re-invested for the purposes of that fund, or purchased out of the interest of the fund remitted to this country, even though the company carries on business in the United Kingdom (*m*).

The interest on war savings certificates is also exempt, provided the certificates are not held in excess of regulations by the person who claims the exemption (*n*).

Tax deducted before Payment of Interest by Bank of England, &c.

Under Schedule C the tax is deducted by the authorities, agents and so on, entrusted with the payment of the interest, annuities, &c. in making the payment (*o*). One set of rules (*p*) applies to payments made to or through the Bank of England, the Bank of Ireland, or the National Debt Commissioners; they must make accounts and deliver assessments and forward them to the Special Commissioners (*q*). The latter send a certificate to the Bank of England, &c., showing (among other things) the amounts of tax due from those bodies (*r*), who are to

(*l*) Sect. 46 (1), read with sect. 239 (2). As to residence, *vide infra*, p. 248.

(*m*) Sect. 46 (2) (3); "assurance company" means any person or body of persons to which the Assurance Companies Act, 1909, applies; "foreign life assurance fund" is also defined in sect. 237, *infra*, p. 406. The Act of 1909 (9 Edw. 7, c. 49) applies by sect. 1 to all persons or bodies corporate or unincorporate carrying on within the United Kingdom business (as there defined) of life assurance, fire, accident, or employer's liability insurance, or bond investment, and to a company registered under the Companies Acts transacting such business in any part of the world.

(*n*) Act of 1918, s. 47.

(*o*) Other matters relating to deduction of tax at the source are dealt with in Chap. XI.

(*p*) Set out *infra*, p. 429.

(*q*) Rules 1, 2, 3.

(*r*) Rules 4, 5.

retain the amount of the tax shown in the certificate before making any payment (*s*). The retaining of the amount is deemed a payment of the tax by the person entitled to the interest, &c.; and the bodies retaining the tax are deemed to have paid the full amount due to such a person (*t*). Speaking generally, these rules do not apply where the half-yearly payment due does not exceed 50*s*. (*u*), and no deduction of tax is made where the dividends are certified by the Charity Commissioners to be subject only to charitable trusts, and to be exempt from income tax (*x*). Interest, &c. payable out of public revenues by a public department is taxed in a similar manner to the foregoing (*y*).

Interest on Foreign Loans, &c.

Interest, &c. payable out of foreign revenues (and indeed out of colonial revenues, where this is not payable through the Bank of England or of Ireland) is taxable under a separate set of rules (*z*). The effect (*a*) of these rules, taken with the schedule, is that interest, &c. on a foreign loan is to be charged with income tax, and the agents for payment (*b*) are to be assessed and are to pay tax on behalf of the persons entitled to the interest, &c. (*c*). The agent is bound under penalty to produce accounts to the Commissioners of Inland Revenue; upon these the Special Commissioners assess the agent, allowing, however,

(*s*) Rule 6.

(*t*) Rule 7.

(*u*) Rule 9; such small payments are taxed under Sched. D, No. III. *infra*, p. 203.

(*x*) Rule 10; Charitable Trusts (Amendment) Act, 1855 (18 & 19 Vict. c. 124), s. 28. As to exemptions generally for charitable purposes, *vide infra*, pp. 261 *sqq*.

(*y*) "Rules as to interest, &c., payable . . . by any public department," *infra*, p. 432. The main difference is that the Commissioners who charge the interest are officers of the department concerned, appointed under sect. 69.

(*z*) Set out *infra*, p. 430. The word "dividends" is used in this set of rules to cover interest, annuities, dividends, and shares of annuities," see rule 9.

(*a*) Per ROWLATT, J., in *Purdie* v. *R.*, [1914] 3 K. B. 112, at p. 116; the decision is discussed *infra*, p. 258.

(*b*) Rule 7 gives a list (not intended to be exhaustive) of such agents; see also definition of coupons in rule 9.

(*c*) Rule 3, read with rule 7 of the preceding set of rules, set out *infra*, p. 429.

for any exemptions (*d*). He is liable as if the tax were due from himself (*e*), and receives for this service an allowance at a rate not less than 13*s.* 6*d.* per 1,000*l.* of the interest, &c. in question (*f*). He is not obliged to disclose the affairs of any person for whom he is acting (*g*).

(*d*) Rules 1, 2, *infra*, p. 430; as to exemptions, see Chaps. I. and XIII.
(*e*) Rule 4.
(*f*) Rule 5.
(*g*) Rule 9. As to the practice under the corresponding rules in the Act of 1853, see Lord CAVE'S remarks in *Singer* v. *Williams*, [1921] 1 A. C. at pp. 50, 51.

CHAPTER VI.

TRADES AND PROFESSIONS: SCHEDULE D, CASES I. AND II.

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Trade.

Under Case I. of Schedule D (*a*), the tax is charged "in respect of any trade not contained in any other Schedule," that is to say, in respect of all trades other than the "concerns" taxable under No. III. of Schedule A (*b*). It extends to every trade, whether carried on in the United Kingdom or elsewhere (*c*); and trade "includes every trade, manufacture, adventure or concern in the nature of trade" (*d*).

Those words are so wide as to be practically all-embracing, but there have been cases in which their application has been highly debateable. Although there have been some decisions bearing upon the larger question, What is trade? those cases have often arisen upon one

(*a*) See Chap. III. Where the trade is not carried on by an individual, the assessment is made on the partnership, company, or body of persons that carries it on, *vide infra*, pp. 242, 246.

(*b*) Sched. D, rule applicable to Case I., *infra*, p. 433; and see Chap. III., *supra*.

(*c*) Rule applicable to Case I.

(*d*) Sect. 237; in the Act of 1842 these words appeared in Case I. of Sched. D; they are now more conveniently placed in the interpretation clause.

(*e*) See Chap. XI.

or other of two subsidiary questions; first, whether one branch of the business carried on by a commercial company or partnership is a separate trade or a part of their general trade; and secondly, whether a business carried on by a society or body of persons otherwise non-commercial, is in fact of the nature of trade.

With regard to the larger question it has been held that the words, "in the nature of trade," appearing in the definition qualify only "concern" and not "adventure"; accordingly, the whole business of an insurance company forms its "adventure" and therefore its "trade" within the meaning of the Income Tax Acts, although some part of it consists of investment operations, not as a distinct object of trading, but as subsidiary to the business of life and fire insurance (*f*). It may be said more broadly that if the adventure or concern is carried on by commercial methods, the motive for which it is carried on is immaterial; and thus a society whose object is the diffusion of religious literature but which incidentally carries on bookseller's shops is to that extent engaging in trade; on the other hand, where the same society carries on a colportage agency in which the business is not purely that of pushing the sale of the goods, but largely that of administering religious advice, it is not engaged in trade (*g*). "While . . . the establishment and conduct of the shops and the establishment and conduct of the colportage all rest upon the same ultimate motive, yet at the same time the two operations seem to be essentially distinguished. The shops are simply bookseller's shops—the other is a combination of the sale of books with a missionary enterprise" (*h*). Again, the Governors of a hospital who make a profit by

(*f*) *Liverpool and London and Globe Insurance Co.* v. *Bennett*, [1912] 2 K. B. 41; the decision was affirmed in H. L., [1913] A. C. 610, but the judgments in C. A., especially that of FLETCHER MOULTON, L.J., at p. 55, bring out more clearly the point indicated in the text. Other aspects of the case are dealt with *infra*, p. 129.

(*g*) *Religious Tract and Book Society* v. *Forbes* (1896), 23 R. 390; 3 Tax C. 415. See the other cases cited therewith, *infra*, p. 108; and cf. *Mersey Docks* v. *Lucas*, *supra*, p. 87.

(*h*) Per ROBERTSON, L.P., 3 Tax C. at pp. 418, 419.

letting off rooms in the hospital buildings for entertainments or meetings are to that extent carrying on a trade and are assessable under Schedule D for that profit, although it is applied for hospital purposes (*i*). And the operations of a dock or port authority may constitute a trade or business, although the profits must by statute be applied (after paying charges) for the benefit of the port (*k*).

The same principle underlies the decision that a trustee for creditors who, while winding up the rest of the business of a firm, carries on a separate portion of it for profit, is to that extent engaged in trade, although his motive in doing so is to liquidate the debts of the firm (*l*).

A company formed to acquire and deal with the assets of a bank in liquidation may be carrying on a trade (*m*).

A shipping concern is itself a trade, and if a ship is owned in shares, the owners of the shares are assessable as such in respect of the trade carried on by means of the ship; they cannot treat the ownership of their respective shares as a mere part of any other trade in which they happen to be engaged (*n*), even if that other trade is the sole ownership of another ship (*o*).

What is a Trade? Insurance and Investment Companies.

An insurance company which has no shareholders, but consists entirely of members having participating policies and effects mutual insurance among the members, is not carrying on a trade in doing so, but is assessable for profits upon annuities and non-participating policies and upon other branches of insurance business which do

(*i*) *Coman* v. *Governors of Rotunda Hospital, Dublin*, [1921] 1 A. C. 1.

(*k*) See *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 891, *supra*, p. 87, *infra*, p. 137; and *Port of London Authority* v. *I. R.*, [1920] 2 K. B. 612.

(*l*) *Armitage* v. *Moore*, [1900] 2 Q. B. 363; the trustee wound up the spinning business, but continued to supply power from the mill to other firms.

(*m*) *Assets Co., Ltd.* v. *Forbes* (1897), 24 R. 578; 3 Tax C. 542; but in that case it did not appear whether any profits had in fact been made.

(*n*) *A.-G.* v. *Borrodaile* (1814), 1 Price, 148.

(*o*) *Farrell* v. *Sunderland S.S. Co.* (1903), 4 Tax C. 605.

constitute a trade (*p*); where there are shareholders, the profits made on participating policies are profits of a trade (*q*).

A company whose business is to make advances on securities which include shipments of wool and other produce from Australia to England, the amounts of the advances fluctuating from time to time according as produce is realized, is carrying on a trade, and not merely an investment of money in securities, although some of its advances are made on the security of real property in Australia (*r*).

A company whose sole business is to borrow money in the United Kingdom and invest it in foreign countries and British colonies, although it carries on a trade, is taxable under Case IV. at the option of the Crown (*s*).

What is a Trade? Benevolent Institutions.

It has been seen that the motive of the business is immaterial, provided that the methods employed are commercial (*t*). The business of selling a hymn-book is a trade, although the profits are distributed among widows and orphans of ministers and missionaries (*u*); so is that of a book-seller's shop, though the profits are devoted to the spread of religious knowledge in other ways (*x*); and that of a restaurant, whose proceeds go to the support of an institution for religious and social improvement (*y*). Similarly, a hospital which lets rooms for entertainments

(*p*) *New York Life, &c.* v. *Styles* (1889), 14 A. C. 381; as to the method of assessing insurance companies, *vide infra*, p. 144.

(*q*) *Last* v. *London Assurance, &c.* (1885), 10 A. C. 438, *infra*, p. 144; *Equitable Life, &c.* v. *Bishop*, [1900] 1 Q. B. 177.

(*r*) *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 645; 2 Tax C. 367, *infra*, p. 111.

(*s*) *Scottish Mortgage Co. of New Mexico* v. *McKelvie*, and *Smiles* v. *Northern Investment Co. of New Zealand*, *infra*, p. 129. As to the Crown option, *vide infra*, p. 129.

(*t*) *Supra*, p. 106. As to exemptions in relation to charitable purposes, *vide infra*, p. 261.

(*u*) *Trustees of Psalms and Hymns* v. *Whitwell* (1890), 3 Tax C. 7.

(*x*) *Religious Tract and Book Society* v. *Forbes*, *supra*, p. 106.

(*y*) *Grove* v. *Young Men's Christian Association* (1903), 4 Tax C. 613.

and meetings is carrying on a trade (*z*). Again, the carrying on of a lunatic asylum or hospital for profit is a trade, although the payments received from paying patients are used only to provide for those patients who are too poor to pay the whole cost of their maintenance and treatment (*a*).

What is a Trade? Golf Clubs.

A members' golf club holding its links of a railway company at a nominal rent under a lease in which the club covenanted to maintain the links in good condition and to admit visitors on payment of green fees at rates which the lessor company had power to vary (subject to a minimum limit), was held to be taxable under Case I., or alternatively under Case VI. The links would not have existed as such and could not have been carried on but for the subscriptions of the members themselves, and it was not proved that any profit was made out of the visitors' payments. It is difficult to say what this case decides, except that this particular club was to be taxed on some amount. HAMILTON, J., held first, that the members had annexed to their club a separate enterprise—the admission of visitors—which resulted in pecuniary receipts; and secondly, that it was not impossible to ascertain whether that enterprise was capable of earning profits; thirdly, he was unable to hold that the Commissioners were wrong in assuming that there was some profit made (*b*). Fourthly, he held that their method of ascertaining the amount of the profit was wrong. The case was ordered to be remitted to the Commissioners to ascertain the amount of the taxable income. In the Court of Appeal, COZENS-HARDY, M.R., said that the question

(*z*) *Coman* v. *Rotunda Hospital (Governors)*, [1921] 1 A. C. 1, where the last three cases were cited with approval in the House of Lords.

(*a*) *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624; *Needham* v. *Bowers* (1888), 21 Q. B. D. 436; as to exemptions for hospitals, *vide infra*, p. 263.

(*b*) Although the Commissioners are the final judges of fact, it was (it is submitted) a considerable extension of that principle to accept their mere assumption on the ground that there were no facts to show that it was wrong, especially in a case where they were held to have gone wrong in law upon a question of amount.

whether there had been any profits or gains was one of fact; and if that is so, it would seem that the case should have been remitted to them to find the facts by a correct method before, and not after, the Court came to a conclusion on the third point decided by HAMILTON, J.

BUCKLEY and KENNEDY, L.JJ., held that the club were carrying on a trade; but BUCKLEY, L.J., said that it was unnecessary to decide the point, because they might be assessed under Case VI. instead of Case I. (*c*).

What is a Separate Trade?

Where an assurance company (*d*) carries on life assurance business (which includes the business of granting annuities) (*e*) that is to be treated as a separate business from any other class of business carried on by the company (*f*). Subject to life assurance business being thus kept separate, where an insurance company invests the money not immediately required for the purpose of meeting claims or of complying with the laws of countries in which it carries on business, or invests its accumulated profits and derives interest from its investments, these operations do not form a separate trade (*g*); and the company is therefore taxable on the profits derived from them (*h*). A mutual insurance business carried on by the members for their own benefit forms a separate trade from the non-mutual business done by the same company (*i*). On the other hand, it has been

(*c*) *Carlisle and Silloth Golf Club* v. *Smith*, [1912] 2 K. B. 177; [1913] 3 K. B. 75; approved by the House of Lords in *Coman* v. *Rotunda Hospital (Governors)*, *supra*, p. 109. As to Case VI., *vide infra*, p. 223.

(*d*) For definition, *vide supra*, p. 102, note (*m*).

(*e*) Sect. 237, *infra*, p. 407.

(*f*) Sched. D, Cases I. and II. r. 15 (1), *infra*, pp. 143, 440. This rule makes inapplicable the previous decisions to the contrary in *Last* v. *London Assurance, &c.* (1884), 12 Q. B. D. 389, *infra*, p. 144 (this case went up to the House of Lords upon other points); *Scottish Union, &c.* v. *Smiles* (1889), 16 R. 461; 2 Tax C. 551; and *Liverpool and London Globe, &c.* v. *Bennett*, [1912] 2 K. B. 41; [1913] A. C. 610. It was originally enacted in the Finance Act, 1915 (5 & 6 Geo. 5, c. 62), s. 11, but only repeals the decisions last cited to the extent stated in the text.

(*g*) *Liverpool and London Globe, &c.* v. *Bennett*, *supra*.

(*h*) Including the part not remitted to this country, *vide infra*, p. 209.

(*i*) *New York Life, &c.* v. *Styles*, *supra*, p. 108.

decided that a company which made loans partly on the security of produce shipped to the country, and partly on that of real property in British colonies, could not claim to distinguish these two branches of its business so as to be taxed under Case IV. instead of Case I. on the profits of the second branch; but it is submitted that this might legitimately be done in any case in which the accounts of the two branches were not inextricable (*k*). A members' golf club may carry on a separate trade in connection with visitors' green fees (*l*).

In the case of institutions with a religious or philanthropic purpose, a similar question may arise; and a society whose object is primarily religious, but which carries on a bookseller's shop as a trade (*m*), and an association formed for the improvement of young men, which carries on upon commercial principles a restaurant open to the public (*n*), are engaged in trades distinct from their main business, which is non-commercial; and cannot set off the expenses of that business against the profits of the trade.

A company owning a whole ship is carrying on a trade separate from that of another ship in which it owns only a share (*o*).

Trade carried on in the United Kingdom or elsewhere.

It has already been stated (*p*) that the tax is leviable under Schedule D on the profits of a trade carried on in the United Kingdom or elsewhere. This statement requires expansion. A person residing in the United Kingdom is taxable under Case I. of Schedule D on the whole profits of a trade which he carries on in the United Kingdom (*q*); if, however, the trade of a person so resident is carried on entirely outside the United Kingdom, he is

(*k*) *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 645; 2 Tax C. 367, *supra*, p. 108.

(*l*) *Carlisle and Silloth Golf Club* v. *Smith*, *supra*, p. 109.

(*m*) *Religious Tract and Book Society* v. *Forbes*, *supra*, p. 108.

(*n*) *Grove* v. *Y. M. C. A.*, *supra*, p. 108.

(*o*) *Farrell* v. *Sunderland S.S. Co.*, *supra*, p. 107.

(*p*) *Supra*, p. 105.

(*q*) Sched. D, 1 (a) (ii): Rule applicable to Case I., *infra*, p. 432.

not taxable under Case I., but is taxable only in respect of that portion of the profits which he receives in the United Kingdom, and his assessment is made under Case V. (*r*). A person not resident in the United Kingdom is taxable under Case I. on the whole profits of any business exercised by him in the United Kingdom (*s*). It is immaterial whether the person carrying on the trade is a British subject or not (*t*).

Difficult questions arise, first as to what constitutes residence in the United Kingdom, both in the case of an individual, and in the case of a company; secondly, as to how far a trade which at first sight appears to be carried on, at least in part, outside the United Kingdom, is carried on by a person resident in the United Kingdom; and thirdly, as to whether a person resident outside the United Kingdom is carrying on a trade within it. So far as the first question applies to an individual, it is discussed elsewhere (*u*), because it affects other matters besides Cases I. and II. of Schedule D; in this chapter it is, however, proposed to discuss the first of these questions as far as it applies to companies; the second question, which is bound up with this aspect of the first; and the third, which involves matters that may compendiously be described as "agency" (*x*).

"Residence" of Companies and Partnerships: Registration.

The question whether individuals reside in the United Kingdom or not can be determined without reference to the business which they own or carry on, and is dealt with in Chapter XII. But a limited company has no physical residence; and the question whether it "resides" in the United Kingdom for the purpose of income tax depends upon whether the "head and seat and directing power"

(*r*) Where the word "possessions" includes "trade"; *Colquhoun* v. *Brooks* (1889), 14 A. C. 493, *infra*, pp. 114, 209.

(*s*) Sched. D, 1 (a) (iii): Rule applicable to Case I., *infra*, p. 432.

(*t*) This is expressed in Sched. D, 1 (a) (iii), and implied in Sched. D, 1 (a) (ii); there is no apparent reason for the difference of language.

(*u*) *Infra*, p. 248.

(*x*) So far as "agency" bears on the machinery of collection as apart from the imposition of liability, it is considered in Chap. XII., *infra*, p. 252.

of the business are situate in this country or not; consequently this question can only be discussed in connection with the business actually carried on (*y*). Attempts have, however, been made to establish the contention that a company "resides" in the country in which it is registered or incorporated, or in which its registered office is situate; these attempts have always failed. At the highest, the country of incorporation is only one among many factors, which may indicate where the head and seat and directing power are situate (*z*). But companies registered in the South African Republic (*a*), in Cape Colony (*b*), in New Zealand (*c*), and in the United States (*d*), have been held to be resident in the United Kingdom, because the head and seat and directing power were in London. And the operations of subsidiary companies incorporated abroad have been held in certain cases to form part of the trade of principal companies resident in this country (*e*).

A partnership, the control and management of whose business is situate abroad, is deemed to be resident outside the United Kingdom, like a company similarly circumstanced, and is assessable to the same extent and no more, although some of the partners may be personally resident in this country (*f*).

Trade carried on entirely outside the United Kingdom.

The profits of a trade carried on entirely outside the United Kingdom are not taxable under Case I., even if

(*y*) *Vide infra*, pp. 116—120.

(*z*) *Cesena Sulphur Co.* v. *Nicholson; Calcutta Jute Mills* v. *Nicholson* (1876), 1 Ex. D. 428; *Imperial Continental Gas Association* v. *Nicholson* (1877), 1 Tax C. 138; *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378, *infra*, p. 115.

(*a*) *Goerz & Co.* v. *Bell*, [1904] 2 K. B. 136, *infra*, p. 117.

(*b*) *De Beers Consolidated Gold Mines, Ltd.* v. *Howe*, [1905] 2 K. B. 612; [1906] A. C. 455, *infra*, p. 118.

(*c*) *New Zealand Shipping Co.* v. *Stephens* (1907), 5 Tax C. 553.

(*d*) *American Thread Co.* v. *Joyce* (1912), 6 Tax C. 1, 163.

(*e*) *Vide infra*, p. 120.

(*f*) Sched. D, Cases I. and II. r. 12, *infra*, p. 439; *Sulley* v. *A.-G.*, *infra*, p. 124.

the trade belongs in part to a person residing in the United Kingdom (*g*). At first sight the opening words of Schedule D (*h*) seem wide enough to make the whole profits of such a trade taxable; but "the whole Schedule must be read together. . . . Unquestionably the rules applicable to a particular 'Case' may cut down, and cut down very materially, the charging words in the earlier part of Schedule D" (*i*). The machinery of assessment provided by the Act is not applicable to those profits, except as to that portion which is received in this country (*k*).

Trade carried on partly within and partly outside the United Kingdom.

Colquhoun v. *Brooks* (*l*) was the case of a partner in a business carried on in Australia who resided in England and did not in fact exercise any control over the business, though his partnership agreement entitled him to do so if he desired. The contrast between this case and that of *Ogilvie* v. *Kitton* (*m*), shows clearly the line that has to be drawn for purposes of income tax between trades carried on exclusively outside the United Kingdom, and those carried on partly or wholly within the United Kingdom. Both cases deal with individuals and not with companies. In the latter case the appellant, who resided in Scotland, was the owner of a business locally situate in Canada; he had the sole right of control; the managers and other employees were his servants and could not act without his authority, and statements of all their transactions were

(*g*) *Colquhoun* v. *Brooks* (1889), 14 A. C. 493.

(*h*) Sched. D, 1 (a) (ii), and rule applicable to Case I., *infra*, pp. 432, 433.

(*i*) Per Lord MACNAGHTEN, 14 A. C. at pp. 514—5.

(*k*) That portion is taxable under Case V., *infra*, p. 433; the machinery provisions on which the conclusion stated in the text is founded by Lord HERSCHELL, 14 A. C. at pp. 506—508, are sects. 106 and 108 of the Act of 1842, the relevant portions of which are now replaced by Sched. D, Misc. Rules, r. 4. His Lordship refers also to rule 3 (now rule 10) of Sched. D, Cases I. and II., *infra*, p. 438, and to sect. 39 of the Act of 1842, now replaced by Sched. D, Misc. Rules, r. 2, *infra*, p. 444, and rule 3 of the General Rules, *infra*, p. 451. See also per Lord MACNAGHTEN at pp. 515, 516.

(*l*) *Supra*.

(*m*) [1908] S. C. 1003; 5 Tax C. 338.

sent him weekly. Although, in fact, he had not found it necessary to intervene, he was held to be carrying on a business in the United Kingdom and to be taxable under Case I. on the whole of the profits whether received in this country or not.

Midway between the two cases last described lies that of a bank whose head office is in this country, but which carries on operations in foreign countries through branches established there. Such a bank is carrying on a single business, and it is taxable in the United Kingdom upon the whole of its profits (*n*). Further, where the corporeal subjects of the trading (such as a railway) are situate in a foreign country, the company which carries on the railway, although it has no other business, is taxable on the whole of the profits if the head and seat and directing power, or, in other words, if the "conduct and management, the head and brain of the trading adventure," are situate in this country (*o*); but if the corporeal subjects (in this case a hotel) are situate abroad, and the conduct and management are also outside this country, the company is not taxable under Case I. but only under Case V. upon the portion of the profits remitted to the United Kingdom (*p*). The law was stated thus in the case last cited (*q*):—

"Where a resident in the United Kingdom is proprietor of a profit-earning business wholly situate and carried on abroad, he is chargeable to income tax under Case V. of Schedule D if he takes no part in earning those profits, and if he takes any part, is chargeable under Case I. This is true whether the proprietor is a natural or an incorporated person; whether he takes part in earning the profits in his own person or only by agent or servants. The question is whether the profits are wholly or partly earned from a business wholly or partly carried on in the United Kingdom. If he takes a part at home in earning the profits, its importance relatively to that taken by his

(*n*) *London Bank of Mexico* v. *Apthorpe*, [1891] 2 Q. B. 378, *infra*, p. 154.
(*o*) *San Paulo (Brazilian) Rail. Co.* v. *Carter*, [1896] A. C. 31, *infra*, p. 116.
(*p*) *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 1022, *infra*, p. 119.
(*q*) Per Lord SUMNER, [1915] A. C. at pp. 1039—40.

agents abroad does not matter, nor does the liability to be charged under Case I. depend on active interference. Control exercised here over business operations abroad, though they are far greater in volume or magnitude, will suffice for Case I.: *San Paulo (Brazilian) Rail. Co.* v. *Carter* (*r*). So, too, will mere oversight regularly exercised, even though actual intervention never becomes necessary, everything abroad going smoothly without it: *Ogilvie* v. *Kitton* (*s*). Some actual participation in carrying on the trade is necessary, though it may not go beyond passive oversight and tacit control. It is not enough that the proprietor merely has the legal right to intervene: otherwise *Colquhoun* v. *Brooks* (*t*) would have been otherwise decided; for there the respondent was entitled to intervene at any time, though in fact he never did so, but took his share of the profits just as they happened to be earned by those in control abroad."

Head and Seat and Directing Power.

The question where the head and seat and directing power of a company are situate is a question of fact; and if the Commissioners have recorded a finding upon this question, the Courts will not interfere unless they are satisfied there was no evidence before the Commissioners upon which that finding could be reached (*u*).

The head and seat and directing power of a company and of its business may be situate in this country, even though the business is concerned solely with an undertaking whose physical situation is in a British possession or a foreign country. Thus, companies have been held to be resident and carrying on trade in the United Kingdom, where the trade was that of a sulphur mine in Italy (*x*),

(*r*) [1896] A. C. 31, *supra*, p. 115.

(*s*) [1908] S. C. 1003; 5 Tax C. 338, *supra*, p. 116.

(*t*) 14 App. Cas. 493, *supra*, p. 114.

(*u*) *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, *infra*, p. 121; *New Zealand Shipping Co., Ltd.* v. *Stephens* (1907), 5 Tax C. 553, *infra*, p. 117; *American Thread Co.* v. *Joyce* (1912), 6 Tax C. 1, 163, *infra*, p. 118.

(*x*) *Cesena Sulphur Co., Ltd.* v. *Nicholson* (1876), 1 Ex. D. 428.

of a jute mill in India (*y*), of gasworks in continental countries (*z*), of a hotel in Colorado (*a*), of a railway in Brazil (*b*), of oil wells in Galicia (*c*), of breweries in the United States (*d*), of cotton mills in the United States (*e*). On the other hand, in the case of two hotels in Egypt, the head and seat and directing power were held to be situate in that country and not in the United Kingdom (*f*). The question depends on the facts of the management and not on the physical situation of the thing that is managed.

If the meetings of the directors who manage the business are held in the United Kingdom, the "head and seat and directing power" are situate there. The residence of one or more directors in the country where the physical subjects of the trade are situate is not enough to transfer the head and seat and directing power to that country if their powers are delegated to them by, and their actions are subject to the control of, the board in this country (*g*); still less does it affect the matter if the representative abroad is a servant of the company and not a director (*h*). On the other hand, if the actions of the directors residing abroad are not subject to the control of the directors in this country, the head and seat and directing power may be situate outside the United Kingdom (*i*). Cases in which there is a separate or subsidiary company abroad will be discussed below (*k*).

(*y*) *Calcutta Jute Mills, Ltd.* v. *Nicholson* (1878), 1 Ex. D. 428.

(*z*) *Imperial Continental Gas Assocn.* v. *Nicholson* (1887), 1 Tax C. 138.

(*a*) *Denver Hotel Co., Ltd.* v. *Andrews* (1895), 3 Tax C. 356.

(*b*) *San Paulo (Brazilian) Rail. Co.* v. *Carter*, [1896] A. C. 31.

(*c*) *Grove* v. *Elliots and Parkinson* (1896), 3 Tax C. 481.

(*d*) *Frank Jones Brewing Co., Ltd.* v. *Apthorpe* (1898), 4 Tax C. 6; *U. S. Brewing Co., Ltd.* v. *Apthorpe, ibid.* 17; *St. Louis Breweries, Ltd.* v. *Apthorpe, ibid.* 111; *Apthorpe* v. *Peter Schoenhofen Brewing Co., Ltd.* (1899), *ibid.* 41.

(*e*) *American Thread Co.* v. *Joyce* (1913), 6 Tax C. 1, 163.

(*f*) *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 1022.

(*g*) *Cesena Sulphur Co.* v. *Nicholson*, *Calcutta Jute Mills* v. *Nicholson*, *supra*, p. 113; *Frank Jones Brewery Co., Ltd.* v. *Apthorpe*; *Goerz & Co.* v. *Bell*, [1904] 2 K. B. 136; *De Beers Consold. Gold Mines, Ltd.* v. *Howe*, [1905] 2 K. B. 612; [1906] A. C. 455; *New Zealand Shipping Co., Ltd.* v. *Stephens* (1907), 5 Tax C. 553.

(*h*) *San Paulo (Brazilian) Rail. Co.* v. *Carter*, *supra*; *Grove* v. *Elliotts & Parkinson*, *supra*, note (*c*); cf. *Ogilvie* v. *Kitton*, *supra*, note (*f*).

(*i*) *Mitchell* v. *Egyptian Hotels, Ltd.*, *supra*.

(*k*) *Infra*, p. 120.

The principles above stated may be illustrated by considering somewhat more closely three of the more recent cases. In *De Beers Consolidated Gold Mines* v. *Howe* (*l*), the trade was not only the owning and working of diamond mines in Cape Colony, but the sale of the diamonds got in those mines to a syndicate in London. The company was registered, its head-office (so called) was situate, and its general meetings were held, in Cape Colony; but by the articles of association four at least of the directors were bound to reside in England, and a clear majority of them were in fact so resident. Weekly meetings of directors were held in London as well as at Kimberley, the financial operations and the selling of the diamonds were carried on in London, and a large portion of the profits was due to the judicious mode in which the sale was regulated. "It is in London that the governing work of the company is done, and where the principal officers of the company meet in greatest numbers and consult and determine its business" (*m*). The company were held to be taxable under Case I. on the whole of their profits.

Cotton-mills in the United States were the subject of the trade in *American Thread Co.* v. *Joyce* (*n*), but none of the produce was sold in the United Kingdom. The mills were the property of an American Company which had been promoted, and the whole of the common stock of which was owned, by an English company. The board of the American company met weekly in New York, and the directors resident in America formed an executive committee which directed the current business between those meetings, and reported to each director, wherever resident. A majority, however, resided in this country; extraordinary meetings were to be held in Great Britain, and powers were reserved to these meetings to select the executive committee and to fix its remuneration and the term of its office, to appoint the higher-paid officers of

(*l*) The facts appear in [1905] 2 K. B. 612; as to the effect of registration, see p. 113, *supra*.

(*m*) Per PHILLIMORE, J., at p. 632.

(*n*) (1913) 6 Tax C. 1, 163, *supra*, p. 113.

the company, to borrow money on the company's credit, and so on. The meetings in England were in fact held every fortnight; they criticized and called for information not only as to dividends and finance, but also with regard to the working of the various mills both on its technical and its trading side. "The whole purse-strings in the sense of money coming in by borrowing" were "kept most zealously at Manchester" (*p*). "The directorate in Manchester was a directorate of paramount authority, as is shown not only by the fact that the reserved subjects are kept for them in extraordinary session, but by this, that as the Commissioners found, they were constantly supervising and guiding the policy of the company, even as regards matters which belonged to manufacture and trading" (*q*). It was held by all the Courts (up to and including the House of Lords) that the Commissioners had evidence before them on which they could come to the conclusion of fact at which they arrived, that the head and seat and directing power of the Company were in the United Kingdom, and that therefore the company was liable to tax under Case I. upon the whole of its profits.

In *Mitchell* v. *Egyptian Hotels Co.* (*r*) again, the business being that of two hotels in Egypt, no transactions which actually earned profit were carried on in this country; but in this case there was no constant supervision and guidance by a board of directors in this country; there was a local board in Egypt, under whose orders the hotels were managed by the company's servants. The board of directors in the United Kingdom retained the rights to fix the remuneration of the local board, and to decide at what period a balance of profit or loss should be struck; but they had not in fact exercised either of these rights. The accounts were made up in Egypt to the end of the usual financial year, and reported by the local board to the board of directors for the annual general meeting of the company, which was held in London. The board of

(*p*) Per Cozens-Hardy, M.R., at p. 29.
(*q*) Per Viscount Haldane, L.C., at p. 164.
(*r*) *Supra*, p. 115.

directors met only once during the year of assessment, when they recommended a dividend and authorized the raising of a loan out of which to pay it, rather than withdraw money from Egypt and thus deplete the working capital in that country. It was held that the company was not liable to pay tax under Case I. on the whole of its profits, but only under Case V. upon such part as was remitted to this country. It will be observed from this decision that the mere operations of declaring a dividend, and of raising capital, are not sufficient to place "the head and seat and directing power" in this country; nor is an ultimate right of control sufficient, if it is not exercised in fact (*s*).

Separate or Subsidiary Companies.

Where a company which resides or carries on business in the United Kingdom has relations with another company which carries on operations abroad, the question often arises whether those operations form part of the business of the former company; in other words, whether the latter company is independent of the former or subsidiary to it. The answer to this question depends not on the financial control, not, that is to say, on the ownership of the greater part or the whole of the shares in the second company, but on the direction of the business.

Owing to the conditions imposed by the company laws of certain of the United States, many of the companies in regard to which such questions have arisen have been companies incorporated in the United States to hold property in the interest of British companies. The mere fact that the British company holds the majority of the shares, (or all that the American law applicable allows), is not sufficient to make it taxable under Case I. on the whole of the profits of the American company, even though the consent of the English company is sought before the American declares a dividend (*t*).

(*s*) *Vide supra*, pp. 115, 116.

(*t*) *Bartholomay Brewing Co.* v. *Wyatt*, [1893] 2 Q. B. 499; as to taxation

"A company may control another company; but it does not necessarily follow because an individual controls the company, or the company controls the company, or the company controls the individual, that the business carried on by the person or company controlled is necessarily a business carried on by the controller; and particularly is that the case when the machinery of companies is used and the controller is a company" (*u*).

"The control of individual corporators is something wholly different from the management of the business itself. Nor is this principle less true when the holding of the individual corporator is so large that he is able to override the wishes of the other corporators in matters relating to the control of the business of the company. The extent, but not the nature, of his power is changed by the magnitude of his holding" (*x*).

Each case of this kind raises, however, a question of fact (*y*), and where the business is carried on by means of the plant and property of the English company and with working capital provided by it, the English company may be far more than merely the holder of shares in the American company, and may stand towards the latter in the relation of principal and agent. In such a case the English company is taxable under Case I. in respect of the whole profits of the American business (*z*).

An English company owned all the shares in a German

under Case V. of the portion of the profits brought to this country, *vide infra*, p. 217; *Kodak, Ltd.* v. *Clark*, [1902] 2 K. B. 450; [1903] 1 K. B. 505.

(*u*) Per PHILLIMORE, J., in *Kodak, Ltd.* v. *Clark*, [1902] 2 K. B. at p. 459.

(*x*) Per FLETCHER MOULTON, L.J., in *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. at p. 98.

(*y*) *Vide supra*, p. 116.

(*z*) *Apthorpe* v. *Peter Schoenhofen Brewery Co., Ltd.* (1899), 4 Tax C. 41; *St. Louis Breweries, Ltd.* v. *Apthorpe* (1898), *ibid.* 111, as explained by FLETCHER-MOULTON, L.J., in *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. at pp. 101, 102. The two former cases were distinguished in *Kodak, Ltd.* v. *Clark, supra*, note (*t*), on the ground that the minority shareholders were not found to be independent people, as they were in the *Kodak* case, but this ground of distinction is no longer necessary in view of the decision in *Gramophone and Typewriter, Ltd.* v. *Stanley*. In *United States Brewing Co.* v. *Apthorpe* (1898), 4 Tax C. 17, the committee that managed the American business was actually appointed by the English company.

company; the members of the board of management of the German company were also directors of the English company, which nominated the members of the board of supervision of the German company. When the German company was first formed it had other shareholders (holding 460 out of 1,000 shares) who brought in considerable capital; their shares had all been acquired by the English company, but there was no evidence that the German company had ever become a sham company or a mere cloak for the English company. The requirements of the German company's statutes and of German company law had always been carefully fulfilled. "At any time the English company . . . . . might have sold any proportion of [the shares] to independent corporators, and the latter would have found the affairs of the German company in strict order, just as though it had been carried on throughout as a company in which the shares were held in many hands." It was held that the business of the German company was not carried on by the English company, and that the latter were not liable to pay income tax upon a sum of money which had not been remitted to this country (*a*) because it had been written off to meet depreciation of patents (*b*).

Trade exercised within the United Kingdom by a Non-Resident Person: Agency.

A person, although not resident in the United Kingdom, may exercise a trade within it, so as to be taxable on the profits of that trade (*c*); but that trade may of course be separate from any trade which he carries on either in his own country, or from his own country with other countries outside the United Kingdom.

(*a*) *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89; the passage cited appears at p. 101. The principle upon which the decision was based is stated at p. 121, *supra*. It goes further than the decision in *Nobel Dynamite Trust Co.* v. *Wyatt*, [1893] 2 Q. B. 499, which is not now, therefore, of much importance.

(*b*) A sum so written off forms part of the profits of a company, although it is not available for distribution as dividends, *vide infra*, p. 152.

(*c*) Sched. D, 1 (a) (iii); *infra*, p. 432; *vide supra*, p. 112; as to residence or non-residence, *vide infra*, p. 248.

The trades exercised by non-residents in the United Kingdom are usually carried on by means of what may compendiously be termed "agents"; and a resident agent is assessable in the place of a non-resident principal (*d*), though if the principal comes to this country he may be assessed in his own name (*e*).

The liability to tax in respect of a trade has frequently depended on the question whether the person resident in this country carries on business on his own account, or as an "agent"; but it does not turn strictly upon the relation of the parties as principal and agent under the law of contract, and it is important to bear in mind that the liability is imposed by Schedule D itself, and that the rules (with the possible exception of rule 7 (*f*)), which provide for assessment in the name of resident persons are merely machinery and do not themselves impose the charge. The first question therefore is whether a trade is exercised in the United Kingdom; the second whether, if so, there is in the United Kingdom a person chargeable to the tax (*g*).

A non-resident person, then, is assessable in the name of, and for any profits arising to him directly or indirectly through, any factor, agent, receiver, branch or manager (whether such factor, &c. receives the profits or not) (*h*), as well as any resident person with whom he carries on business under some arrangement by which the resident person gets little or no profit (*f*); but business done through a broker or general commission agent, or an agent casually employed (*i*), does not make the non-resident person chargeable, nor does such a person become chargeable under these rules merely by reason of any transactions with other non-

(*d*) General Rules 5 to 14, *infra*, p. 452. See Chap. XII., *infra*, p. 252.

(*e*) *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89; *infra*, p. 126.

(*f*) Rule 7, *infra*, p. 452; this rule does not apply to British subjects, firms or companies. It first appears with other portions of the General Rules here referred to in sect. 31 (3) of the Finance (No. 2) Act, 1915, and its effect is discussed *infra*, p. 254.

(*g*) See *Crookston* v. *Furtado*, [1911] S. C. 217; 5 Tax. C. 602; *infra*, p. 128, where the two questions were kept distinct.

(*h*) General Rules, rr. 5, 6, *infra*, p. 452.

(*i*) Rule 10, *infra*, p. 453; see note (*f*), *supra*.

residents (*k*). There are special provisions applying to the estimation of profits in certain of these cases; where the true profits of the business carried on in this country cannot readily be ascertained, the Commissioners may estimate them at a percentage of the turnover (*l*); and upon application, profits of manufacture and production outside the United Kingdom will be eliminated, and the assessment made or amended accordingly (*m*).

Trade exercised by a Resident Person on behalf of a Non-Resident.

The mere employment of an agent or setting up of a branch in this country to buy goods for export and for sale in another country does not constitute the exercise of a trade within the United Kingdom even if the branch is conducted by a partner (*n*). This was decided under the Act of 1842, but is still good law; although it is true that if a trade were actually exercised within the United Kingdom, the rules of assessment would now make a branch of any kind chargeable with the tax (*o*).

If, however, contracts which entitle the persons making them to receive profits are habitually made in the United Kingdom by or on behalf of a non-resident, a trade is being exercised by him in the United Kingdom, even though the fulfilment of the contracts takes place wholly or in part abroad (*p*). But the contracts must actually be made in this country, and if they are in fact made abroad, the mere fact that they may have been secured through

(*k*) Rule 11.

(*l*) Rule 8, *infra*, p. 452; see note (*f*) on previous page, and *vide infra*, p. 256. Whatever may have been the limits of its application when it was first enacted as sect. 31 (4) of the Finance (No. 2) Act, 1915, rule 8, where it now stands, may be applied in any case where a non-resident is charged in the name of a resident.

(*m*) Rule 12, *infra*, p. 453; see also p. 256.

(*n*) *Sulley* v. *A.-G.* (1860), 29 L. J. Ex. 464; the branch was carried on by a partner resident in England; the goods bought by him were sold in America; this decision was approved in *Grainger* v. *Gough*, *infra*, p. 125.

(*o*) *Vide supra*, p. 124; *Smidth* v. *Greenwood*, [1920] 3 K. B. 275, *infra*, p. 129.

(*p*) *Erichsen* v. *Last* (1881), 8 Q. B. D. 414; *Werle* v. *Colquhoun* (1888), 20 Q. B. D. 753; cf. *Lovell & Christmas, Ltd.* v. *Commr. of Taxes*, [1908] A. C. 46.

canvassing done by agents resident in this country does not constitute the exercise of a trade (*q*).

"There is a broad distinction between trading *with* a country and carrying on a trade *within* a country. . . . . Many merchants and manufacturers export their goods to all parts of the world, yet I do not suppose that any one would dream of saying that they exercise or carry on their trade in every country in which their goods find customers. . . . . The word 'agent' obviously cannot extend to every agent for whatever purpose he may be employed, as, for example, to an advertising agent" (*r*).

". . . . . It cannot, in my opinion, be denied that the mere fact of a foreigner selling his goods to English customers does not constitute an exercise of his trade within this country, although he is trading with this country. But it was argued that the habitual employment of agents to obtain orders and transmit them abroad constitutes the act of selling to English customers an exercise of trade in this country. I am unable to accede to that argument" (*s*).

"The real place where the trade is exercised is the place where the transactions forming the alleged business are closed, in the case of a selling business, by the sale of the commodity and the profit thereby realized. . . . Until the sale is effected the trade is incomplete" (*t*).

In some of the decided cases it was sought to show that the person assessed as agent was in fact a principal (*u*); in none of them was this contention made out; but where it can be shown that the person resident in this country *bonâ fide* acquires the property in the goods consigned to him, sells them for his own profit and bears the risk of loss, the business carried on in this country is doubtless that of the

(*q*) *Grainger & Son* v. *Gough*, [1896] A. C. 325.

(*r*) *Grainger* v. *Gough*, [1896] A. C. per Lord HERSCHELL at pp. 335, 337. Although it is not now necessary that the agent, &c. should have the receipt of the profits, see note (*h*) on p. 123, it is submitted that Lord HERSCHELL'S observation is still applicable.

(*s*) *Ibid.*, per Lord DAVEY at p. 346; see note (*r*).

(*t*) *Smidth* v. *Greenwood*, [1920] 3 K. B. 275, per ROWLATT, J., at p. 286.

(*u*) *E.g.*, in *Watson* v. *Sandie & Hull*, and *Weiss Biheller & Brooks* v. *Farmer*, *infra*, pp. 127, 128.

resident and not that of the non-resident, even though (as is now the practice in regard to many classes of goods) the resident is obliged to adhere to a list of prices fixed by the non-resident (*x*).

The presence or absence of a non-resident's name in business directories and so forth does not of itself indicate that he is or is not exercising a trade within the United Kingdom (*y*).

Course of Business between Resident and Non-Resident.

The broad principles upon which non-residents have or have not been held to exercise a trade within the United Kingdom have been stated above. They cannot be illustrated without a brief statement of the course of business which led to the conclusion reached in each of the decided cases. The mere maintenance of a buying branch does not constitute the exercise of a trade (*z*). A telegraph company owning marine cables connected with the Post Office telegraphs, receiving messages in the United Kingdom both at an office of their own and through the General Post Office, and employing in this country an agent and about forty clerks and electricians, were held to be exercising a trade in the United Kingdom (*a*).

Several cases have been decided in regard to trade in French wines. Where orders for the wines were received in this country, whether by an agent paid on commission or otherwise, a *del credere* agent, or a branch office of the French firm, the French firm were exercising a trade in this country (*b*), but the French firm were held not to be doing so where the contracts for sale and the deliveries of

(*x*) Rule 7 of the General Rules was introduced, it is submitted, to prevent the revenue suffering from merely colourable arrangements of this kind; but see p. 255, *infra*.

(*y*) *Grainger* v. *Gough*, *supra*, p. 125; *Weiss Biheller & Brooks* v. *Farmer*, *infra*, p. 128.

(*z*) *Sulley* v. *A.-G.*, *supra*, p. 124.

(*a*) *Erichsen* v. *Last*, *supra*, p. 124; the contrary was argued on the ground that the cable-ends in this country were not themselves profitable. Cf. *N. Z. Commrs. of Taxes* v. *Eastern Extension Telegraph Co., Ltd.*, [1906] A. C. 526.

(*b*) *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89; *Pommery & Greno* v. *Apthorpe* (1886), 2 Tax C. 182; *Werle* v. *Colquhoun* (1888), 20 Q. B. D. 753.

goods were made in France, although they employed canvassers here who solicited orders and transmitted them, and in some cases received and remitted the price paid for the goods (*c*).

On the other hand, where a Glasgow firm effects the whole of the chartering and keeps the accounts, in respect of a ship which trades with this country and is owned by a Norwegian company, the latter exercises a trade in the United Kingdom (*d*).

Packers in America consigned their goods to representatives in England who invoiced the goods in their own name at prices fixed by themselves but rendered statements to the American firm, crediting themselves with commission and other charges, and remitting to or drawing upon the American firm, as the case might be; the American firm took the risk of loss, and the property in the goods never passed to the English representatives. The American firm were held to be exercising a trade in this country (*e*). The same conclusion was reached where the English representatives accepted orders and made delivery in this country, although they had to obtain the authority of the American company before accepting any order, and although they paid the freight (but not apparently the marine insurance) from Boston (*f*).

A firm in Glasgow were the sole principal agents for the sale of a French company's phosphates. The phosphates were shipped from Algeria by the French company on the receipt of "bought notes" from the purchasers. The bills of lading were granted in favour of the French company, and handed over by the Glasgow firm to the purchasers in return for cheques which were always forwarded to the French company. The firm received no moneys on behalf

(*c*) *Grainger* v. *Gough, supra*, p. 125.

(*d*) *Wingate* v. *Webber* (1897), 24 R. 939; 3 Tax C. 569.

(*e*) *Watson* v. *Sandie & Hull*, [1898] 1 Q. B. 326.

(*f*) *Thos. Turner, Ltd.* v. *Rickman* (1898), 4 Tax C. 25. The facts were very similar, and led to the same conclusion, in *Macpherson* v. *Moore*, [1912] S. C. 1315; 6 Tax C. 107.

of the French company, but were paid their commission directly by the French company. The latter were held not to be exercising a trade within the United Kingdom(*g*).

Where the sole representatives in the United Kingdom were *del credere* agents, who sold at prices fixed by themselves the gas mantles produced by a Dutch company, took a commission of five per cent., credited the Dutch company with the cost price of the goods sold plus ten per cent., and divided the balance of the profits with the Dutch company in a fixed ratio, the Dutch company were held to be exercising a trade within the United Kingdom, and to be taxable in the name of their English representatives (*h*).

Where a foreign bank employs a bank in the United Kingdom to float loans on the London market, and the British bank issues prospectuses, collects the money subscribed and remits it to the foreign bank or to the borrowers, subject to a deduction of commission, the foreign bank is not in a position analogous to that of a foreign merchant selling goods in this country through an agent, and is not exercising a trade within the United Kingdom (*i*).

A Danish firm resident at Copenhagen were manufacturers of machinery which they exported all over the world. They had an office in London in charge of a whole time servant, who was a qualified engineer. He received enquiries in London from potential customers, forwarded to Copenhagen particulars of their requirements, and gave purchasers in this country his advice in erecting the machinery when supplied. But the contracts for sale were made in Copenhagen and the goods shipped there

(*g*) *Crookston* v. *Furtado*, [1911] S. C. 217; 5 Tax C. 602, *supra*, p. 123. The second question decided in that case was that the Glasgow firm were not chargeable as agents under sect. 41 of the Act of 1842, because they received no moneys on behalf of the French company; the wider language of rule 5, *infra*, p. 452, makes the decision on this point obsolete, but leaves untouched that given upon the first point and stated in the text; see note (*r*) on p. 125.

(*h*) *Weiss, Biheller & Brooks* v. *Farmer*, [1918] 2 K. B. 725.

(*i*) *Yokohama Specie Bank, Ltd.* v. *Williams* (1915), 6 Tax C. 634.

f. o. b. The firm were held not to be carrying on a trade in the United Kingdom (*k*).

Interest on Investments: Option to tax under Case III. or Cases IV. and V.

Many forms of trade necessitate the making of investments for the purposes of the trade; the leading instance being the business of insurance societies. The Crown has the option of taxing the profits of the trade under Case I., or the interest from the investments under Case III. or Cases IV. and V. (*l*); and naturally chooses the Case which gives it the highest yield of tax (*m*).

" . . . . Inasmuch as the Income Tax Acts do not only deal with profits in the true sense of the word as a commercial profit, but also deal with and impose taxes upon the interest of investments, the Crown has always been allowed when investments are held by a trading company, if it suits them, to say, " We will charge you a tax upon the produce of your investments, and we won't charge the tax upon your profits." The Crown cannot charge the tax on both—that is to say, it cannot take a trading account which has money—its assets and investments—and first of all charge income tax upon the produce of investments, and then over and above charge on the profits. It must elect between the two. The reason is very obvious, because if the Crown were not allowed to do that, the Crown would lose the produce of an investment

(*k*) *Smidth* v. *Greenwood*, [1920] 3 K. B. 275.

(*l*) See Chaps. VIII. and IX.; and especially *Gresham Life, &c.* v. *Styles*, *Edinburgh Life, &c.* v. *L.-A.*, and *Hancock* v. *General Reversionary, &c.*, *infra*, pp. 194—196, where the difficult questions were discussed to which the right to deduct tax gives rise in cases of this kind.

(*m*) *Scottish Mortgage Co.* v. *McKelvie* (1886), 14 R. 98; 2 Tax C. 165; *Smiles* v. *Northern Investment Co.* (1887), 14 R. 734; 2 Tax C. 177; *Norwich Union, &c.* v. *Magee* (1896), 3 Tax C. 457; *Revell* v. *Edinburgh Life, &c.* (1900), 5 Tax C. 221; *Liverpool and London and Globe, &c.* v. *Bennett*, [1912] 2 K. B. 41; [1913] A. C. 610. As to profit made on realizing investments, *vide infra*, p. 138. Special provisions dealing with the income from investments of an assurance company whose head office is not in this country will be found in Case III. r. 3, *infra*, p. 441.

according to the extent whether that investment was held by a private individual or by a trading company" (*n*).

Where the tax on the interest has not been deducted at the source (*o*), the interest may be added in computing the profits of the trade for assessment under Case I. (*p*). The interest so added may include interest on investments abroad which is not remitted to the United Kingdom, whether the investments are made to satisfy the laws of the country where business is carried on or are made voluntarily out of accumulated profits or to provide capital for the purposes of the trade (*q*). It may also include interest on advances made on the security of real property situate abroad, where the business of making such advances is inextricable from that of making advances on the security of produce imported to this country (*r*).

Profession, Employment or Vocation.

The income tax is leviable under Case II. of Schedule D (*s*) in respect of every profession, employment or vocation, except those public offices or employments which are within the purview of Schedule E (*t*). With that exception, it extends to every employment by retainer (in

(*n*) *Revell* v. *Edinburgh Life, &c.* (1900), 5 Tax C., per Lord DUNEDIN, L.P., at p. 226; cited by COZENS-HARDY, M.R., [1912] 2 K. B. at p. 51.

(*o*) *Vide infra*, p. 181.

(*p*) *Scottish Union, &c.* v. *Smiles; Northern Assurance, &c.* v. *Russell* (1889), 16 R. 461; 2 Tax C. 551; *Clerical, Medical and General, &c.* v. *Carter* (1889), 22 Q. B. D. 444; *Norwich Union, &c.* v. *Magee, supra*, p. 129; *Revell* v. *Edinburgh Life, &c., supra*, p. 129; *Liverpool and London and Globe, &c.* v. *Bennett, supra*, p. 129.

(*q*) *Norwich Union, &c.* v. *Magee, supra*, p. 129; *Liverpool and London and Globe, &c.* v. *Bennett, supra*, p. 129. Interest on investments abroad which was not remitted to this country was held not to be taxable in *Gresham Life, &c.* v. *Bishop*, [1902] A. C. 287, and other cases cited therewith, *infra*, p. 219; but in those cases the assessment had been made under Case IV. If it had been made under Case I., apparently the result would have been as indicated in the text.

(*r*) *Smiles* v. *Australasian Mortgage and Agency Co.* (1888), 25 S. L. R. 645; 2 Tax C. 367, *supra*, p. 111. If it had not been inextricable, it seems probable that the interest on the first class of advances would have come within the purview of Case IV.; but upon the facts the Court held that it did not.

(*s*) *Infra*, p. 432.

(*t*) See Chap. XI.

whatever character and for whatever period), and to all profits and earnings of whatever character arising from employments (*u*). As the profits of trades are taxable under Case I. and the amount of profits and gains is ascertained in the same way under either Case, the distinction between trades on the one hand and professions, employments and vocations on the other, is not of much practical importance. A company indeed cannot exercise a profession (*x*); but apart from any topics dealing with companies, whatever is said in connection with Schedule D as to trades is, in general, true also as to professions.

"Employment" in Case II. is not confined to the employment of one man by another; "a man may employ himself so as to earn profits in many ways . . . . the word "vocation" is analogous to "calling," a word of wide signification, meaning the way in which a man passes his life"; accordingly, the calling of a professional bookmaker is a vocation within Case II. (*y*). Money paid to a land agent as commission incident to services performed in relation to the carrying out of a contract of sale is part of the profits arising out of the vocation of the land agent, as such (*z*).

The only salaried employments taxed under Schedule D may be said broadly to be employments under a firm (not being a company) or an individual employer, the

(*u*) Rule applicable to Case II., *infra*, p. 433.

(*x*) Cf. *Wm. Esplen, Ltd.* v. *I. R.*, [1919] 2 K. B. 731.

(*y*) *Partridge* v. *Mallandaine* (1886), 18 Q. B. D. 276, see per DENMAN, J., at p. 278.

(*z*) *Humphrey* v. *Peare*, [1913] 2 Ir. R. 462; 6 Tax C. 201. The provision excepting from excess profits duty (Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 39) offices or employments and certain professions is not strictly analogous, but reference may be made to the following cases decided upon it: *Inland Rev.* v. *North*, [1918] 2 K. B. 705 (private schoolmaster); *Inland Rev.* v. *Maxse*, [1919] 1 K. B. 647 (magazine editor and proprietor); *Barker* v. *Inland Rev.*, [1919] 2 K. B. 222 (stockbroker); *Burt* v. *Inland Rev.*, *ibid.* 650 (commission agents); *Wm. Esplen, Ltd.* v. *Inland Rev.*, *ibid.* 731 (company carrying on work of naval architects); *Currie* v. *Inland Rev.*, [1921] W. N. 78 (income tax repayment agent); *Smeeton* v. *A.-G.*, [1920] 1 Ch. 85 (advising engineer); *Robbins* v. *I. R.*, [1920] 2 K. B. 677 (general sales manager). In most of these cases the person concerned would probably be held to be carrying on a profession, &c., within the meaning of the Income Tax Acts.

remainder being taxed under Schedule E (*a*). If any portion of the salary is deferred, as a contribution to a provident fund and so forth, it is nevertheless a part of the profits of the employment (*b*); a mere book credit of a sum of money which may become the property of the person assessed on the happening of a certain contingency, but may never be his at all, is not enough to include that sum in his taxable profits (*c*).

Questions whether contributions to thrift or provident funds are included in the profits of employment are discussed in connection with Schedule E (*d*).

(*a*) But *wage* earners, weekly or monthly, even if employed under a company, are taxed under Sched. D: *A.-G.* v. *Lancashire and Yorkshire Rail. Co.* (1864), 33 L. J. Ex. 163, *infra*, p. 236.

(*b*) See also pp. 146, 231.

(*c*) *Walker* v. *Reith* (1906), 8 F. 381; in that case sums were credited to the chief employees in a business, but were not to become their property until they should buy out the business.

(*d*) *Infra*, p. 231.

CHAPTER VII.

PROFITS OF TRADES AND PROFESSIONS: SCHEDULE D, CASES I. AND II.

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Basis of Assessment: Profits and Gains.

Tax under Schedule D as regards trades, professions, employments and vocations is charged "in respect of the annual profits or gains arising or accruing from" them (*a*); as regards trades, it is computed "on the full amount of the balance of the profits or gains" (*b*); as regards professions, &c., "on the full amount of the balance of the profits, gains and emoluments" (*c*). In computing "the amount of the profits or gains to be charged" certain deductions are prohibited (*d*); and subsidiary provisions refer to "profits or gains" (*e*) or to "profits" (*f*).

(*a*) Sched. D, 1 (a), *infra*, p. 432. The period over which the profits are to be computed, and the rules as to averaging succession, loss, and so on, are considered at the end of this chapter.

(*b*) Rule applicable to Case I., *infra*, p. 433.

(*c*) Rule applicable to Case II.

(*d*) Sect. 209, *infra*, p. 399, and rules applicable to Cases I. and II. rr. 1 (1) and 3, *infra*, p. 433. In the corresponding third rule contained in the Act of 1842, the phrase "profits or gains" was "loosely and inaccurately" used to mean gross receipts (per Lord Herschell in *Gresham Life, &c.* v. *Styles*, [1892] A. C. at pp. 323—4). That blemish, at any rate, has been removed in the drafting of the Income Tax Act, 1918.

(*e*) *E.g.*, Cases I. and II. rr. 1 (2), 4—8; General Rules, 18—21.

(*f*) *E.g.*, Cases I. and II. rr. 15, 16, 17.

There is no distinction between "profits" and "gains" (*g*), and in fact all these varying and somewhat pompous phrases mean the same thing,—the net profits of the trade or profession computed by reasonable business methods, subject to any specific directions contained in the Income Tax Acts.

The truth of the above proposition is not always appreciated; the following authoritative statements are therefore cited to show the broad principle upon which assessments in respect of trades and professions are to be made:—

"What is the meaning of 'profits or gains' . . . . ? Unless the context requires a different meaning or the words appear to be used throughout the Act in another sense, I think they must be construed according to their ordinary signification. When we speak of the profits or gains of a trader, we mean that which he has made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise" (*h*).

"The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. . . . . Unless and until you have ascertained that there is such a balance, nothing exists to which the name of 'profits' can properly be applied" (*i*).

"It is plain that the question of what is or is not profit or gain must primarily be one of fact, and of fact to be ascertained by the tests applied in ordinary business. Questions of law can only arise when . . . . some express statutory direction applies and excludes ordinary commercial practice, or where, by reason of its being impracticable to ascertain the facts sufficiently, some presumption has to be invoked to fill the gap" (*k*).

(*g*) *Mersey Docks and Harbour Board* v. *Lucas* (1883), 8 A. C. 891, *supra*, p. 87, per Lord SELBORNE at p. 905; *Port of London Authority* v. *I. R.*, [1920] 2 K. B. 612.

(*h*) *Gresham Life, &c.* v. *Styles*, [1892] A. C., per Lord HERSCHELL at p. 322.

(*i*) *Russell* v. *Town and County Bank*, 13 A. C., per Lord HERSCHELL at p. 424, *infra*, p. 147.

(*k*) *Sun Insurance Office* v. *Clark*, [1912] A. C. 443, per Lord HALDANE at p. 455.

"The expression 'balance of profits and gains' implies, as has often been pointed out, something in the nature of a credit and debit account, in which the receipts appear on the one side and the costs and expenditure necessary for earning these receipts appear on the other side. . . . . Where a deduction is proper and necessary to be made in order to ascertain the balance of profits and gains, it ought to be allowed . . . . provided there is no prohibition against such an allowance . . . . " (*l*).

"Trade incomings are not profits of the trade till trade outgoings have been paid or allowed for and deducted.

"Rule 1 of the First Case of Schedule D does not, however, leave matters to the taking of a commercial account simpliciter; it provides that this duty shall be 'assessed, charged and paid without other deduction than is hereinafter allowed' (*m*); and this must mean, though it is not strictly expressed, without other deductions in the computation of the sum on which duty is charged. Section 159 states it thus (*n*). . . . Virtually both provisions mean that in computing the sum which when ascertained is to be charged with duty, only the enumerated deductions shall be lawfully allowable.

"The paradox of it is that there are no allowable deductions expressly enumerated at all, and there is in words no deduction allowed at all unless indirectly (*o*) . . .

"The effect of this structure, I think, is this, that the direction to compute the full amount of the balance of the profits must be read as subject to certain allowances and to certain prohibitions of deductions, but that a deduction, if there be such, which is neither within the terms of the prohibition nor such that the expressed allowance must be

(*l*) *Usher's Wiltshire Brewery, Ltd.* v. *Bruce,* [1915] A. C., per Lord PARKER at p. 458, *infra,* p. 156.

(*m*) Rule 1 (1) of Sched. D, Cases I. and II., in the Act of 1918, *infra,* p. 433, is slightly different in wording, but this does not affect Lord SUMNER'S argument.

(*n*) See now sect. 209 (1) (a), *infra,* p. 399.

(*o*) There are now positive directions with regard to deductions for depreciation, see Cases I. and II. rr. 6 and 7; but in general the structure is still as described by Lord SUMNER.

taken as the exclusive definition of its area, is to be made or not to be made according as it is or is not on the facts of the case a proper debit item to be charged against incomings of the trade when computing the balance of profits of it" (*p*).

"Instead of saying that the duty shall be imposed on .... the amount of the profits .... it is imposed 'on the balance' of such profits. I have not been able to discover any difference in the meaning of the two phrases" (*q*).

"The general words 'profits and gains' or 'balance of profits and gains' are equally applicable whatever the commercial concern carried on may be" (*r*).

"(Case I.) plainly contemplates the preparation of a balance sheet in which proper trading disbursements and liabilities are to be set against trade assets, so that the surplus of the latter, if any, will represent the assessable profits or gains of the concern. . . .

"The words ('profits or gains') (*t*) must be taken to mean not gross receipts, but profits and gains the amount of which is to be estimated for the purposes of this Act" (*s*).

On the other hand it must be borne in mind that expenses in order to be deductible in ascertaining profits must be essential to the earning of the gross receipts, and must be incurred for that purpose. "It is not enough that the disbursement is made in the course of, or arises out of, or is connected with the trade, or is made out of the profits of the trade" (*u*). There is no deduction therefore for such expenses or losses as damages for negligence, or penalties for offences (*x*).

(*p*) Per Lord SUMNER, [1915] A. C. at pp. 467, 468.

(*q*) Per Lord BLACKBURN in *Coltness Iron Co.* v. *Black*, 6 A. C. at pp. 333—4, *supra*, p. 82.

(*r*) *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, per Lord HALSBURY, L.C., at p. 315.

(*s*) *Ibid.*, per Lord WATSON at pp. 317, 319.

(*t*) In the 4th rule of the First Case in the Act of 1842, now rule 3 (a), *infra*, p. 434.

(*u*) *Strong* v. *Woodifield*, [1906] A. C. 448, *infra*, p. 138; per Lord DAVEY at p. 453.

(*x*) *Strong* v. *Woodifield*, *supra*; *I. R.* v. *von Glehn*; *I. R.* v. *Warnes*, *infra*, p. 138.

Destination of Profit Immaterial.

If there are profits in the sense above indicated, their destination is immaterial.

"The word 'profits,' as here (*y*) used, does mean the incomings of the concern after deducting the expenses of earning and obtaining them, before you come to an application of them even to the payment of the creditors of the concern . . . .

"The gains of a trade are that which is gained by the trading, for whatever purposes it is used, whether it is gained for the benefit of the community, or for the benefit of individuals. Whether the benefit is to be obtained by dividends, or whether it is to be obtained by lightening and diminishing public burdens, it is the same" (*z*).

The effect of this principle upon the taxation of public undertakings has already been discussed (*a*). It applies equally to private enterprises (*b*); if a company makes profits it is taxable upon them whether it distributes them as dividends or carries them to reserve (*c*), although a reserve fund, so far as it is necessary for the current business, may form an expense of the trade, and not part of the profits (*c*). There is an express direction that the profits of a body of persons (which includes a company) are to be computed before any dividend is distributed; and the company or other body are entitled to deduct the tax in paying the dividend (*d*).

There are also specific prohibitions against the deduction, in computing profits, of any loss not connected with or arising out of the trade or profession (*e*); in order to be

(*y*) Act of 1842, s. 60, Sched. A, No. III., "a claim on or out of the said profits"; see now Act of 1918, Sched. A, No. III. r. 5, *infra*, p. 411.

(*z*) *Mersey Docks* v. *Lucas*, *supra*, p. 134; 8 A. C., per Lord SELBORNE, L.C., at pp. 903, 905; *City of Dublin Steam Packet Co.* v. *O'Brien* (1912), 6 Tax C. 101, *infra*, p. 152.

(*a*) *Supra*, p. 80.

(*b*) *New York Life, &c.* v. *Styles* (1889), 14 A. C. 381, *supra*, p. 108.

(*c*) Cf. *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, [1914] A. C. 1001.

(*d*) General Rules, r. 20, *infra*, p. 455; "body of persons" is defined in sect. 237, *infra*, p. 406. As to persons chargeable, see Chap. XI.

(*e*) Sched. D, Cases I. and II. r. 3 (e), *infra*, p. 434; sect. 209 (2), *infra*, p. 399.

deducted the loss must be in the nature of a commercial loss, and therefore damages for personal injuries due to the negligence of the traders' servants (*f*), and penalties for breaches of the customs laws (*g*) are not to be deducted. Such payments are not necessarily incurred, nor do they form a necessary risk, in earning the profits; this exclusion illustrates the general rule that it is immaterial for what purpose the profits are expended, even if the expenditure is compulsory (*h*).

Upon the same principle, again, a philanthropic society, or a golf club, is taxable for the profits made, even though they are devoted to the general purposes of the society or club (*i*).

Additions to Capital not included in Taxable Profits; Sale of Investments.

The Income Tax Acts charge income, not capital; and income is taxable "notwithstanding that on an adjustment of accounts part of the sums accruing as income ought to go to recoup capital" (*k*).

Controversy often arises as to whether the proceeds of sales of investments in securities, landed property and so on are profits of a trade or accretions of capital. The test is, whether or not a trade is carried on in the buying and selling of the investments. Thus, a man who possesses a collection of pictures for his own enjoyment, and who sells one of them to meet his pecuniary necessities—or even because a tempting offer happens to be made to him—is not taxable for the proceeds of the sale (*k*); but a picture dealer who has bought to sell again is liable on his net profits.

"It is quite a well settled principle . . . . that where

(*f*) *Strong & Co.* v. *Woodifield*, [1906] A. C. 448, *supra*, p. 136; *infra*, p. 157.

(*g*) *I. R.* v. *Warnes*, [1919] 2 K. B. 444; *I. R.* v. *von Glehn*, [1920] 2 K. B. 553, *supra*, p. 136.

(*h*) As to relief in respect of commercial loss, *vide infra*, p. 170.

(*i*) So also a hospital, *vide supra*, pp. 108, 109.

(*k*) *Hudson's Bay Co.* v. *Stevens* (1909), 5 Tax C. 424, per FARWELL, L.J., at p. 437.

the owner of an ordinary investment chooses to realize it, and obtains a greater price for it than he originally acquired it at, the enhanced price is not profit in the sense of Schedule D. . . . But it is equally well established that enhanced values obtained from realization or conversion of securities may be so assessable, where what is done is not merely a realization or change of investment, but an act done in what is truly the carrying on, or carrying out, of a business. The simplest case is that of a person or association . . . . buying and selling lands or securities speculatively, in order to make gain, dealing in such investments as a business, and thereby seeking to make profits. There are many companies which in their very inception are formed for such a purpose, and in these cases it is not doubtful that, where they make a gain by a realization, the gain they make is liable to be assessed for income tax" (*l*).

In practice the line is often difficult to draw. The buying and selling of investments is a necessity of insurance business; and where an insurance company makes a gain by realizing an investment at a larger price than was paid for it, the difference is to be reckoned among its profits (*m*). An investment company (so named) which had power to vary its investments was taxable on the profits made by realizing securities, though these were not distributed as dividend but were credited to capital account, and although the capital account as a whole showed a loss in the year in question (*n*). A company formed to acquire the assets of a bank from the liquidators, so as to enable the liquidation to be finally closed, is taxable if it makes a profit on the realization of those assets (*o*). A mining syndicate formed

(*l*) *Californian Copper Syndicate* v. *Harris* (1904), 6 F. 894; 5 Tax C. 159, per Lord Justice-Clerk MACDONALD at p. 165; cited with approval in *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, [1914] A. C. 1001, at p. 1010.

(*m*) *Scottish Union, &c.* v. *Smiles; Northern Assurance Co.* v. *Russell* (1889), 16 R. 461; 2 Tax C. 551, *supra*, pp. 110, 130. Cf. also *National Provident Institution* v. *Brown*, *infra*, p. 200.

(*n*) *Scottish Investment Trust Co.* v. *Forbes* (1893), 21 R. 262; 3 Tax C. 231.

(*o*) *Assets Co., Ltd.* v. *Forbes* (1897), 24 R. 578; 3 Tax C. 542, see p. 107, note (*m*); cf. *Commissioners of Taxes* v. *Melbourne Trust, Ltd.*, *supra*.

in order to acquire copper-bearing land, to develop it to some extent and then to sell it (but not to work it), in carrying out those transactions is carrying on a trade and is taxable on the profit made (*p*). So a company, one part of whose usual business was to act as selling agent for colliery owners and to purchase wagons for them (*q*), was held to be taxable on the profit of an occasional sale of wagons purchased on its own account.

On the other hand, where the original intention of forming the syndicate was not to buy the land (in that case a rubber estate) in order to sell again, but to work the land; but afterwards, on additional land being acquired, the capital was found to be too small to work the whole, and the land was then sold, the syndicate was held not to be taxable on the profits made by the sale (*r*). In both this and the *Californian* case, the sale of the lands was one of the objects specified in the memorandum of association.

A chartered company "can do anything it is not prohibited from doing," and the specific objects for which it is formed cannot so readily be ascertained as in the case of a limited company; but a chartered company which has received lands in exchange for the surrender of its territorial rights is not taxable on the profits of the sale of such lands, although they may be applied in payment of dividends (*s*).

The British Government expropriated a railway in the territory of the former South African Republic, and paid to the company arrears of interest guaranteed by the Republic; the amount paid was held to be gross receipts of the company's trade, and not to form part of the purchase price of its assets; the company was therefore taxable on that sum, subject to a deduction of trade expenses (*t*).

(*p*) *Californian, &c.* v. *Harris, supra*, p. 139.

(*q*) *T. Beynon, Ltd.* v. *Ogg* (1918), 7 Tax C. 125.

(*r*) *Tebrau (Johore) Rubber Syndicate, Ltd.* v. *Farmer* (1910), 5 Tax C. 658.

(*s*) *Hudson's Bay Co.* v. *Stevens* (1909), 5 Tax C. 425, *supra*, p. 138; see also *Hudson's Bay Co.* v. *Thew*, [1919] 2 K. B. 632, *infra*, p. 214.

(*t*) *Pretoria-Pietersburg Rail. Co.* v. *Elwood* (1908), 6 Tax C. 508, *vide supra*, p. 135.

Interest and Annuities.

If any annual interest or any annuity or other annual payment is a necessary expense, incurred in earning the profits, it falls to be deducted in ascertaining those profits, and cannot be described as payable out of them (*u*). The specific prohibition (*x*) against the deduction of annual interest, annuities, &c. applies only where these are payable out of "profits or gains" and is probably superfluous, because this expression means profits ascertained by an ordinary trading account (*y*), irrespective of the destination of the profits when made (*z*). It has also been sought to treat the prohibition against deductions in respect of capital as prohibiting a deduction of interest on capital (*a*).

In spite, then, of the presence of these prohibitory rules, if a company trades in annuities, selling them in consideration of a price received for them, those annuities are in the same position as regards income tax as coal or corn sold, and the cost to the seller of the annuities (that is, the money annually paid to the holders) must be deducted from the gross receipts earned by selling them just as the cost price of the coal or corn is deducted. "The Legislature intended all traders, whether in groceries, annuities, or other articles of commerce, to be assessed upon the same footing" (*b*). Upon the same principle, an investment company which borrows from its bankers for the purpose of its daily operations an overdraft that may fluctuate in amount from day to day is entitled to deduct the interest payable on that overdraft, because the daily borrowing and lending of money is a part of the company's trade (*c*). But if such

(*u*) *Gresham Life Assurance Co.* v. *Styles*, [1892] A. C. 309, *infra*, p. 143.

(*x*) Sched. D, Cases I. and II. r. 3 (1). As to the right of the payer to deduct and retain tax, *vide infra*, p. 181.

(*y*) *Supra*, p. 134.

(*z*) *Supra*, pp. 137, 138.

(*a*) Rule 3 (f) (g), *infra*, p. 434; in *Farmer* v. *Scottish North American Trust, Ltd.*, [1912] A. C. 118, at p. 129, the H. L. refrained from deciding whether the third rule in Sched. D of the Act of 1842, now replaced by rule 3 (f), has this effect or not.

(*b*) *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, per Lord WATSON at p. 318.

(*c*) *Farmer* v. *Scottish North American Trust, Ltd.*, *supra*; *Reid's Brewery*

borrowing is due to the exigencies of one partner, and not to the necessities of the business, the interest on the short loans cannot be deducted (*d*).

On the other hand, interest on such a permanent security as debenture bonds (*e*) or a mortgage of rates (*f*) is not deductible; nor can a payment for capital so borrowed be deducted because it takes the shape of a bonus at the time of repayment instead of that of interest (*g*); brokers' charges and other expenses of raising debentures are not deductible (*h*). It has been decided that interest paid by contractors during the construction of works to the shareholders of companies by whose order the works were constructed was not deductible in ascertaining the profits of the contractors (*i*); but it is submitted that in certain circumstances such payments might be an expense necessary to the earning of the contractors' profits.

The right possessed by a company dealing in annuities to deduct annuities in ascertaining its profits, does not enable it to retain for its own use the income tax deducted by it in paying those annuities; and it has been held (though it may be doubted whether the decision follows necessarily from that proposition) where the company's dividends on investments were taxed at the source, that it could not deduct the whole of those dividends in rendering an account of its profits, but must write back the amount of the annuities paid (*k*). In effect, the annuities were treated

Co. v. *Male*, *infra*, p. 157; an earlier decision to the contrary effect, that short term interest paid to depositors could not be deducted (*Mersey Loan, &c. Co.* v. *Wootton* (1887), 2 Tax C. 316), was overruled by *Gresham Life, &c.* v. *Styles*, *supra*. Cf. also *Goslings & Sharpe* v. *Blake*, *infra*, p. 182.

(*d*) The decision in *Anglo-Continental Guano Works* v. *Bell* (1894), 3 Tax C. 239, as explained in *Farmer* v. *Scottish, &c. Trust*, *supra*, p. 140, goes no further than is stated in the text.

(*e*) *Alexandria Water Co.* v. *Musgrave* (1883), 11 Q. B. D. 174.

(*f*) *Portobello T. C.* v. *Sulley* (1890), 27 S. L. R. 863; 2 Tax C. 647, *supra*, p. 90.

(*g*) *Arizona Copper Co.* v. *Smiles* (1891), 19 R. 150; 3 Tax C. 149.

(*h*) *Texas Land and Mortgage Co.* v. *Holtham* (1894), 3 Tax C. 255.

(*i*) *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239; both BOWEN and FRY, L.JJ., declined to discuss the point as it had not been raised below; and the facts are not fully stated in the report.

(*k*) *Hancock* v. *General Reversionary, &c. Co.*, [1919] 1 K. B. 25; it may be

as being paid out of the dividends alone; and to that extent the decision appears to run counter to that of the House of Lords in *Gresham Life Assurance Society* v. *Styles* (*l*).

Life Assurance Profits.

The profits of a life assurance business (including that of granting annuities) are ascertained separately from those of any other class of assurance business carried on by the company (*m*); but if it makes a loss on its life assurance business it may set that loss off against the profit on its other classes of business, in the same way as any other person or company carrying on more than one business (*n*). In ascertaining, however, whether it has made such a loss, the income derived from the investments of its life assurance fund is to be treated as profits of the life assurance business (*o*).

The reason for this separate treatment of life insurance business, and the usually accepted method of computing its profits (*p*), will be found in the following passage:—

"... Life policies are contracts of most variable endurance, and the premiums are in many cases not annual payments. The contracts may endure for the policy-holder's life or for a certain number of years stated, or till the holder attains a certain age; and the company may be bound on the expiry of a fixed number of years, or on the attainment of a certain age by the policy-holder, either to pay a lump sum or an annuity for the remainder of the policy-holder's life. The premiums paid for such insurance may be paid all in one sum or by instalments within a fixed number of years, or annually during the holder's life, or during the subsistence of his policy. The premiums, therefore, do in no sense represent the annual profits and

that the company should have paid the annuities in full without deducting tax, *vide infra*, p. 196.

(*l*) The case is further discussed *infra*, p. 196.

(*m*) Sched. D, Cases I. and II. r. 15 (1), *supra*, p. 440.

(*n*) *Vide infra*, p. 173.

(*o*) Rule 15 (2), *infra*, p. 440.

(*p*) Apart from any question of interest on investments, *supra*, p. 129.

gains of the company. In like manner the amount of claims in one year arising on the death of persons insured, or as a deduction from the company's receipts for the year, cannot afford any criterion for the ascertainment of profits. A recently established company will receive a large amount of premiums and have few or no claims to meet. The profits and gains can be ascertained only by actuarial calculations, and this actuarial calculation may be obtained by taking the result of the quinquennial investigation prescribed by statute (*q*), or the periodical investigation in use in companies established before the statute, or by an investigation covering the three years prescribed by Schedule D of the Income Tax Acts" (*r*).

So far as a company carries on a mutual insurance business it earns no profits, though there may be a surplus returnable to the participating policy-holders who are the owners of that business (*s*); the surplus is "nothing but the return of so much of the amount contributed as may be in excess of the amount really required"; and if a business is also done with outsiders, such surplus is not part of the assessable profits of that business. But if there are shareholders and the participating policy-holders are not the owners of the business, bonuses returnable to these policy-holders in accordance with the terms of their policy form part of the profits and are not deductible as expenses (*t*), even though the capital of the shareholders who own the business is trivial in comparison with the volume of trade and their dividend is limited (*u*).

(*q*) See now Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 5.

(*r*) *Scottish Union, &c.* v. *Smiles; Northern Assurance Co.* v. *Russell* (1889), 2 Tax C. 551, *supra*, p. 130; per INGLIS, L.P., at pp. 577—8; approved by Lord SHAW in *Liverpool and Globe, &c.* v. *Bennett*, [1913] A. C. 617. Rule 15 (1) first appeared as sect. 11 of the Finance Act, 1915, but its enactment does not affect the above decisions for the purpose for which they are here cited. See also *Last* v. *London Assurance, &c.* (1884), 12 Q. B. D., per DAY, J., at p. 401.

(*s*) *New York Life, &c.* v. *Styles* (1889), 14 A. C. 381, see Lord MACNAGHTEN at p. 412; *supra*, p. 108.

(*t*) *Last* v. *London Assurance, &c.* (1885), 10 A. C. 438, *supra*, p. 108.

(*u*) *Equitable Life, &c.* v. *Bishop*, [1900] 1 Q. B. 177.

Fire Insurance Profits.

Fire insurance policies are mostly contracts for one year only, but some policies of this kind cover risks for five to seven years. To take for each year the sum total of the premiums received and that of the losses paid and subtract the one from the other, without regard to the facts that the premiums cover risks running on into subsequent years and that the losses include losses arising out of policies issued in previous years is not an accurate or scientific method, but may be a useful working rule. Where this rule was not shown to have produced an inequitable result, the Courts refused to say that it should not have been applied, and to allow an arbitrary deduction (of $33\frac{1}{3}$ per cent.) from one year's profits for risks of the succeeding year in respect of annual policies which did not expire on the day when the accounts of the year were made up (*x*).

But as has already been seen, "there is no rule of law as to the proper way of making an estimate," and "what was a good method once may become inaccurate or obsolete" (*y*); and where the business is of such a character that it would be unfair to refuse a deduction of this kind, it is proper to carry forward annually at the close of the year a percentage of the premium income in order to allow for unexpired risks (*y*). In the case thus decided, it was contended that 40 per cent. was recognized in the insurance world as being the minimum allowance for this purpose, and the Crown did not contest the percentage. In most cases, therefore, it seems that a company which carries on a fire insurance business on modern lines, and whose distributed

(*x*) *Imperial Fire, &c.* v. *Wilson* (1876), 1 Tax C. 71; *Scottish Union, &c.* v. *Smiles; Northern, &c.* v. *Russell* (1889), 16 R. 461; 2 Tax C. 551, *supra*, p. 139; *General Accident, Fire, &c.* v. *McGowan*, [1908] A. C. 207. The decision of the House of Lords in the last case went no further than is here stated, and the headnote in the Law Reports is misleading, see per Earl LOREBURN in *Sun Insurance Office* v. *Clark*, [1912] A. C. at p. 453.

(*y*) *Sun Insurance Office* v. *Clark*, [1912] A. C. 443. The paragraph in the text is based on Lord LOREBURN'S speech. An extract from Lord HALDANE'S speech is given at p. 134, *supra*.

profits are not such as to make it obvious that such a deduction is unfair to the Revenue (*z*), will succeed in obtaining an allowance of this nature and probably at that percentage.

Land Development.

In ascertaining the profits of a land development company, it is often difficult to analyze the accounts in such a way as to make sure that the whole of the expenses necessary to earn the gross receipts are set against the latter: where a company bought a piece of ground, built houses and created feu duties which it sold, it was held that the whole difference between the price paid for the ground and the price received for the feu duties did not represent profits; the price received had clearly been earned in part by the expense of building the houses, but it was equally obvious that the whole cost of the houses could not be deducted unless the ground were sold, which was not the case (*a*). In England, the same result would follow where ground rents are created; and the whole cost incurred would not be deducted unless the fee simple were sold.

Retiring Allowances and Gratuities.

Pensions, allowances or gratuities paid by employers to their servants on retirement may be deductible (even though the contract of employment gives the employee no right to any such payment) in ascertaining the profits of the trade or profession of the employer, because the expectation of receiving such payments on retirement attracts persons of the class desired into the service of the employer at smaller salaries than they would otherwise demand (*b*).

If the employer purchases an annuity for the retiring employee instead of himself making an annual payment, the purchase price of the annuity may be deductible (*c*). There would probably have been little or no contest in

(*z*) See per Lord LOREBURN at p. 453.
(*a*) *Furtado* v. *Cardonald Feuing Co.*, [1907] S. C. 36.
(*b*) *Smith* v. *Incorporated Council of Law Reporting*, [1914] 3 K. B. 674.
(*c*) *Hancock* v. *General Reversionary, &c. Co., Ltd.*, [1919] 1 K. B. 25.

these cases had it not been for an earlier decision that no deduction was admissible where the payment to the employee was in fact made as a part of the consideration for the transfer to the employer of a business in which that employee was previously employed(*d*). The reason given for the decision in the two cases first cited clearly did not apply here.

The principle laid down in those cases appears to apply to any payments made by an employer to widows or dependants after the death of an employee as well as to payments made to the employee himself(*e*).

Annual Value of Business Premises.

The annual value of premises situate in the United Kingdom which are exclusively used for business purposes is to be taken into account in ascertaining the balance of profits and is properly to be deducted. The reason for the deduction has been variously put upon the grounds that that deduction is "an essential element to be taken into account in ascertaining the amount of the balance of profits," that it is "included in a very broad construction of the provision relating to disbursements and expenses"(*f*), or that it follows from the express words that "the computation of tax shall be made exclusive of the profits . . . arising from lands . . occupied for the purpose of" the trade or profession(*g*). The Courts at the present day lean to the view that the specific prohibitions and directions contained in the rules with relation to the computation of profits are subsidiary to the main principle that it is the profits ascertained on reasonable business methods which

(*d*) *Royal Insurance Co.* v. *Watson*, [1897] A. C. 1, *infra*, p. 154.

(*e*) Contributions towards retiring allowances, &c., made by the employee are discussed *infra*, p. 231.

(*f*) *Russell* v. *Town and County Bank* (1888), 13 A. C. 418, per Lord HERSCHELL at pp. 425—6. See Chap. II. as to Sched. A tax on "annual value."

(*g*) *General Hydraulic Power Co.* v. *Hancock*, [1914] 2 K. B. 21, *infra*, p. 148, per SCRUTTON, J., at pp. 28, 29. These words, which formerly appeared in the second rule, are now contained in rule 5 (1) of the rules applicable to Cases I. and II., *infra*, p. 435.

must be computed (*h*); so that the first reason given by Lord HERSCHELL would probably now be preferred (*i*).

A bank which for its own purposes requires the manager of one of its branches to reside in a portion of the premises and takes no rent from him is entitled to a deduction of the whole annual value of the premises including the residential portion; the bank are in the same position as if that portion were used in any other way for its purposes and business (*k*). The prohibition (*l*) against deducting the rent or annual value of any greater portion of a dwelling-house, &c. than is used for the purpose of the trade or profession applies only to a dwelling-house occupied or rented by the person assessed (*k*).

Except to the limited extent stated below in the case of mills, factories, &c., no deduction of this kind is allowed where the lands or premises used for the purpose of the trade are situate abroad (*m*).

With a similar exception, the amount of the deduction may not exceed that of the Schedule A assessment of the lands in question as reduced for purposes of collection (*n*) as it stands in the year of which the profits are being calculated (*o*).

Traders who occupy mills, factories and similar premises situate in the United Kingdom being by reason of the above exception allowed a deduction of their full annual value in arriving at profits for Schedule D, and the traders who own and occupy mills, &c., being entitled to have the Schedule A assessment reduced by one-sixth (*n*), traders

(*h*) See the extracts from the speeches in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, set out *supra*, p. 135.

(*i*) See *Stevens* v. *E. Boustead & Co.*, [1918] 1 K. B. 382.

(*k*) *Russell* v. *Town and County Bank, supra;* see also *Tennant* v. *Smith*, *supra*, p. 38.

(*l*) Cases I. and II. r. 3 (c), *infra*, p. 434; *e.g.*, a dwelling-house occupied by a solicitor or a physician, who uses a part of it as an office or a consulting room.

(*m*) Rule 5 (1), proviso, *infra*, p. 435; the decision in *Stevens* v. *Boustead*, *supra*, therefore no longer applies except to a limited extent as regards mills, &c.: Finance Act, 1919, s. 18 (1), *infra*, p. 464.

(*n*) *Vide supra*, p. 43.

(*o*) Rule 5 (2), *infra*, p. 436; *General Hydraulic Power Co.* v. *Hancock*, [1914] 2 K. B. 21, *infra*, p. 167.

assessable under Case I. who own and occupy mills, &c. situate abroad, would be penalized by comparison with the class last mentioned, but for a subsequent enactment which provides for a deduction in those cases of one-sixth of the annual value of the mills, &c. (*p*). The annual value of mills, &c. situate abroad is to be ascertained on the same principles as that of mills, &c. in the United Kingdom (*q*).

The meaning of the phrase "mills, factories or similar premises" has already been discussed (*r*).

Subscriptions to Trade Associations.

Although it may be reasonable for a trader to subscribe to a trade association, it is not the case that the amount or the whole amount of every such subscription may be deducted in ascertaining the profits of the trade. It depends upon the purposes to which the money is applied whether the subscription, or a particular portion of it, is deductible or not. A trade association may apply its funds to very different purposes; and "some of these purposes might involve amounts which if charged in the account of the individual member would be proper deductions as being expenses incurred with a view to earning profits, whereas others might not" (*s*). The question whether the expenditure is an outlay to earn profit or an application of profit earned is one of fact (*t*).

Where a trade association devotes the whole of the subscriptions received to paying its members an indemnity on any deficiency of output, due to strikes or other causes, the subscriptions represent an application of profit earned, and are laid out not for the purposes of the trade, but to provide for a contingency in which the trade cannot

(*p*) Finance Act, 1919, s. 18 (1) (3), *infra*, p. 464. The deduction is limited to one-sixth.

(*q*) Finance Act, 1919, s. 18 (1) (3), *infra*, p. 464.

(*r*) *Vide supra*, p. 76.

(*s*) *Lochgelly Iron and Coal Co., Ltd.* v. *Crawford*, [1913] S. C. 810, per Lord DUNEDIN, L.P., at p. 814; 6 Tax C. 267.

(*t*) *Grahamston Iron Co.* v. *Crawford*, [1915] S. C. 536; 7 Tax C. 25; per Lord JOHNSTON at p. 29, citing *Moore* v. *Stewarts and Lloyds, Ltd.* (1906), 8 F. 1129; 6 Tax C. 501, per Lord DUNEDIN at p. 507.

be worked; such subscriptions are not deductible (*u*). On the other hand, where a pooling association for fixing prices, preventing competition amongst its members, and thus increasing their profits, receives subscriptions from them, and returns certain sums to those members who receive less than their agreed share of the total orders received by all the members, the excess of any member's subscriptions over his receipts from the association is a proper deduction (*x*). But the accounts of such an association may have to be analyzed so as to show how the money is actually spent (*y*).

That part of a subscription to an association which covers its contribution to the expenses of a Conciliation Board may be deducted; not so the part covering its subscriptions to the Mining Association of Great Britain, nor the part expended in experiments on the explosive properties of coal dust conducted at the request of the Home Secretary (*z*).

Payments for User of Patents.

It is unnecessary to consider whether a royalty or other sum paid for the user of a patent is a capital or income payment for the purposes of computing trade profits; for the deduction of any such sum is expressly prohibited (*a*). It was formerly held that this prohibition did not apply in any case where the payer could not deduct and retain the tax against the person owning the patent (*b*); but as the prohibition against deduction of the royalty is now separated from the provision enabling the payer to deduct and retain the tax, that decision appears no longer to be applicable (*c*).

(*u*) *Rhymney Iron Co., Ltd.* v. *Fowler*, [1896] 2 Q. B. 79.

(*x*) *Guest, Keen & Nettlefolds, Ltd.* v. *Fowler*, [1910] 1 K. B. 713.

(*y*) *Grahamston Iron Co.* v. *Crawford*, *supra*.

(*z*) *Lochgelly Iron, &c. Co.* v. *Crawford*, *supra*.

(*a*) Sched. D, Cases I. and II. r. 3 (m), *infra*, p. 435. The matter has been considered for another purpose in *Jones* v. *I. R.*, [1920] 1 K. B. 711, *infra*, p. 284.

(*b*) *Lanston Monotype Corpn.* v. *Anderson*, [1911] 2 K. B. 1019; this decision was not followed in Scotland: *Boyd* v. *Havelock*, [1918] S. C. 727.

(*c*) The *ratio decidendi* of the C. A. in *Lanston Monotype Corpn.* v. *Anderson*

Excess Profits Duty: Corporation Profits Tax.

A deduction is allowed of excess profits duty paid. It is made in computing the profits of the income tax year which includes the end of the accounting period in respect of which the excess profits duty has been paid; provision is made for allowance or repayment if the amount of the latter duty has not been ascertained in time (*d*). There is an exception with regard to excess profits duty imposed in respect of the sale of trading stock otherwise than in the ordinary course of trade (*e*). The rule applies also to munitions Exchequer payments (*f*); and to Corporation profits tax (*g*).

Dominion and Foreign Income Tax.

It has now been provided that Dominion income tax shall not give rise to any deduction in estimating income for the purposes of the United Kingdom tax, but that on the contrary an addition is to be made in respect of any Dominion income tax paid or payable (*h*). Accordingly, if a person or company carrying on business in this country is liable directly or indirectly to Dominion income tax, the gross income on which that tax is payable is to be brought into account even if the person or company in fact receives only a net income after deduction of Dominion income tax (*i*).

This provision was perhaps necessary, as a practice appears to have prevailed of allowing Dominion tax as a working expense (*k*); but there was no legal ground for

was that the whole matter was dealt with in a single sentence in sect. 25 (1) of the Finance Act, 1907 (7 Edw. 7, c. 13). The right to deduct and retain tax now appears in General Rules, r. 19 (2), *infra*, p. 455.

(*d*) Sched. D, Cases I. and II. r. 4, *infra*, p. 435.

(*e*) See Finance Act, 1918 (8 & 9 Geo. 5, c. 15), s. 35.

(*f*) Rule 4 (4), (6).

(*g*) Finance Act, 1920, s. 31, *infra*, p. 477; the tax is imposed by Part V. of that Act.

(*h*) Finance Act, 1920, s. 27 (4); *vide supra*, p. 28, for the relief from tax given in cases of this kind.

(*i*) The principle here is that laid down in *Ashton Gas Co.* v. *A.-G.*, *infra*, p. 244; and applied to super-tax in *Samuel* v. *I. R.*, *infra*, p. 283.

(*k*) See *Stevens* v. *Durban-Roodeport Gold Mining Co.*, *infra*, p. 166, where it was agreed that some deduction should be made on this account.

the practice. And where income tax other than Dominion income tax is in question, it cannot give rise to any deduction; if the income has been received free of such a tax, the tax should be "written back."

Capital and Current Expenditure.

As accretions of capital are not to be included in gross receipts (*l*), so expenditure for capital purposes must not be deducted from those receipts in order to ascertain net profits (*m*). The proper test to distinguish between what may and what may not be deducted is this:—Expenditure on account of income is that which satisfies a continuous demand; expenditure on account of capital satisfies a demand made once for all (*n*). Mere book-keeping is not conclusive (*o*). Specific provisions are made for allowances in respect of depreciation of machinery and plant (not of buildings, &c.) (*p*); but these make no difference to the principle above stated.

There is no allowance for wastage of capital (*q*); thus, no deduction can be made to represent the annual exhaustion of natural deposits from which nitrates and iodine are manufactured (*r*). A sinking fund set apart to repay a mortgage debt is not deductible, though the proceeding is made obligatory by Act of Parliament (*s*); neither is a reserve fund set apart for replacement of

(*l*) *Supra*, p. 138.

(*m*) See Sched. D, Cases I. and II. r. 3 (f) (g), and cf. *Coltness Iron Co.* v. *Black*, *infra*.

(*n*) *Ounsworth* v. *Vickers*, [1915] 3 K. B. 267; see also *Vallambrosa Rubber Co.* v. *I. R.*, *infra*.

(*o*) *J. & M. Craig (Kilmarnock), Ltd.* v. *I. R.*, [1914] S. C. 338, *infra*, p. 154.

(*p*) *Infra*, p. 158. This provision was made for the first time in the Customs and Inland Revenue Act, 1878, s. 12.

(*q*) *Coltness Iron Co.* v. *Black* (1881), 6 A. C. 315, is the leading case, though decided under Sched. A, No. III., *supra*, p. 82; see also the cases cited therewith.

(*r*) *Alianza Co., Ltd.* v. *Bell*, [1905] 1 K. B. 184; [1906] A. C. 18; cf. *Kauri Timber Co.* v. *Commr. of Taxes (New Zealand)*, [1913] A. C. 771.

(*s*) *City of Dublin Steam Packet Co.* v. *O'Brien* (1912), 6 Tax C. 101, *supra*, p. 137.

buildings or plant deductible (*t*), nor a premium paid for the leasehold interest in the business premises (*u*).

Again, there is no deduction for expense due to the removal of machinery to smaller or larger premises (*x*). The value of a lost ship is a capital loss, and cannot be deducted; the fact that the owners do not insure their ships, but reserve annual sums to form an "insurance fund" of their own, does not entitle them to deduct even those sums (*y*). The expenses of promoting a Bill in Parliament for a railway construction (*z*), and those of dredging a channel to a shipbuilding works and constructing a deep-water berth are capital expenses and not deductible (*a*); in the latter case the work was necessary in order to enable the traders to carry out a particular contract for the construction of a battle-cruiser, but was not found to have been done solely for this purpose.

On the other hand, the necessary expenses of cultivating and managing a rubber estate incurred in the year in which profits are earned are deductible, and it is no answer to the claim for deduction that a part of those expenses produced no return in that year because the whole of the rubber-trees were not in full bearing; that fact does not make the expenses of superintendence, weeding, &c. a capital expenditure; but the expenses of clearing and draining the estate, and of making roads are capital expenditure. This decision affords a valuable illustration of the test above stated (*b*).

Under a hire-purchase agreement for wagons, the hirers may at the end of the stipulated period pay a further

(*t*) *Forder* v. *Handyside* (1876), 1 Ex. D. 233; *Coltness Iron Co.* v. *Black*, *supra*.

(*u*) *Gillatt & Watts* v. *Colquhoun* (1884), 2 Tax C. 76; the annual value of the premises, of course, forms a legitimate deduction, *vide supra*, p. 147. See also *Watney & Co.* v. *Musgrave*, *infra*, p. 156.

(*x*) *Smith* v. *Westinghouse Brake Co.* (1888), 2 Tax C. 357; *Granite Supply Association* v. *Kitton* (1905), 8 F. 55; 5 Tax C. 168.

(*y*) *I. R.* v. *Western S.S. Co.*, [1907] S. C. 1005.

(*z*) *Moore* v. *Hare*, [1915] S. C. 91; 6 Tax C. 572.

(*a*) *Ounsworth* v. *Vickers*, *supra*, p. 152; cf. *Dumbarton Harbour Board* v. *Cox* (1918), 7 Tax C. 147, *supra*, p. 88.

(*b*) *Vallambrosa Rubber Co., Ltd.* v. *Farmer*, [1910] S. C. 519; 5 Tax C. 529.

nominal sum to acquire the property in the wagons; the whole of the sum payable annually under the agreement is not a capital payment, but that part only which represents payment for hire during the year is deductible in ascertaining profits, while that part which represents payments for the option to purchase is not (*d*). Payments for retiring annuities are not necessarily capital expenditure though paid in a lump sum (*e*).

Cost of Acquiring or Financing a Business or of Obtaining Business.

Money spent in acquiring a business is no more to be deducted than any other kind of capital expenditure (*f*); if a firm of contractors is converted into a company, the company cannot deduct from the profits made out of the contracts acquired from the firm the price paid for acquiring them (*g*). A payment made by a bank for the business of another bank, including a concession by a foreign Government of the right of issuing notes and so on, is capital expenditure, and would have been so even if the payment had been made solely for the power to issue notes (*h*). The purchase price of a business or of business rights is usually paid in a lump sum; but it is not the less capital expenditure if it is paid in a series of annual payments (*i*).

If the owner of a business sells it to a company and

(*d*) *Darngavil Coal Co., Ltd.* v. *Francis*, [1913] S. C. 602; 7 Tax C. 1.

(*e*) *Supra*, p. 146.

(*f*) *Royal Insurance Co.* v. *Watson*, [1897] A. C. 1, *supra*, p. 147. The payment made in commutation of the manager's salary on dispensing with his services was held to form part of the purchase price of the business to which he had formerly been attached, and was on this ground only disallowed as a deduction.

(*g*) *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239. See *J. & M. Craig (Kilmarnock), Ltd.* v. *I. R.*, *supra*, p. 152.

(*h*) *London Bank of Mexico* v. *Apthorpe*, [1891] 1 Q. B. 383; the decision was affirmed in C. A., [1891] 2 Q. B. 378, but this point did not arise.

(*i*) See *Delage* v. *Nugget Polish Co., Ltd.* (1905), 21 T. L. R. 454, *infra*, p. 188. An annual payment of a very similar kind was, however, found as a fact not to be a capital payment in *Moore* v. *Stewarts, Ltd.* (1906), 8 F. 1129; 6 Tax C. 501. The payer's right to deduct income tax on such payments is discussed *infra*, pp. 187 *sqq*.

becomes a shareholder in the company as well as managing director, the company cannot treat the dividend on his shares as being a part of his remuneration as a director, so as to deduct that dividend in computing its profits (*k*).

Upon the same principle, it is not permissible to deduct sums advanced by a principal to a subsidiary company for the purpose of enabling the latter to carry on its business of supplying the principal company with raw material; the case would have been different if the advances had been made against goods to be delivered in the course of an ordinary business transaction (*l*). A loss made on the sale of shares in companies, purchased in order to secure contracts from those companies, is not deductible as a trade expense (*m*). It is not allowable to deduct the expenses of an application for the reduction of capital of a limited company (*n*).

Brewers' Profits.

It may be convenient to deal separately with a series of cases decided with regard to the computation of the profits of trade carried on by brewing companies, although the principles underlying some of these decisions apply to the computation of profits of all kinds of trades.

At one time it was thought that the business of holding and letting "tied" houses was not an integral part of the trade of a brewing company, and that any money expended in so doing was an investment of capital,—no regard being had to what the real nature of the expenditure in or about the tied house would be if the house were not held or owned by a brewing company,—or at any rate that the expenditure was an expense incurred in a separate trade; in other words, that in ascertaining the profits of such a company's trade the cost of production of

(*k*) *Eyres* v. *Finnieston Engineering Co.* (1916), 7 Tax C. 74.

(*l*) *English Crown Spelter Co., Ltd.* v. *Baker* (1908), 5 Tax C. 327; cf. *Anglo-Continental Guano Works* v. *Bell* (1894), 3 Tax C. 239, *supra*, p. 142.

(*m*) *Stott* v. *Hoddinott* (1916), 7 Tax C. 85.

(*n*) *Archibald Thomson, Ltd.* v. *I. R.*, [1919] S. C. 289; 7 Tax C. 158.

beer might indeed be deducted, but not any expense of promoting or increasing its sale (*o*). But it is now established that the holding of tied houses may be a necessary incident in a brewing business, and that expenses incurred by the brewer in connection with such a house may be a necessary outlay for the purposes of his own trade, and none the less so because they enure also to the benefit of the tenant of the house (*p*).

Upon this view it has been decided that the following deductions were admissible in ascertaining the profits of brewers: the share of the compensation levy deducted by the tenant of the tied house against the brewing company who were his landlords (*q*); the difference between the rents of leasehold houses or the Schedule A assessments of freehold houses on the one hand and the rents received from the tied tenants on the other hand (*r*), expenses of repair of these houses actually paid by the brewers, rates and taxes paid by them in place of the tenant, premiums of insurance against fire and against loss of licence, and legal expenses in connection with renewals of licences, surrenders and assignments of leases, and so on (*s*).

The same principle had been applied many years

(*o*) *Watney* v. *Musgrave* (1880), 5 Ex. D. 241; *Brickwood* v. *Reynolds*, [1898] 1 Q. B. 95. In the former case, KELLY, C. B., went so far as to refer to a deduction for cost of advertisement as inadmissible.

(*p*) *Smith* v. *Lion Brewery Co., Ltd.*, [1911] A. C. 150; *Usher's Wiltshire Brewery Co., Ltd.* v. *Bruce*, [1915] A. C. 433, overruling *Brickwood* v. *Reynolds*, *supra*. The passages cited from the speeches in *Usher's Wiltshire case*, *supra*, p. 135, show that this conclusion was not reached until it was made clear that the question did not depend upon the express words of rule 3 (a) of Cases I. and II. of Sched. D, on which several of the previous decisions turned.

(*q*) *Smith* v. *Lion Brewery Co., Ltd.*, *supra;* as to compensation levy, see p. 58, notes (*l*), (*m*).

(*r*) The rent charged to a tied tenant is, of course, less than the annual value of the house, by reason of the burden imposed on the tenant by the covenant "tying" him to buy his liquors from the landlord. As to deduction for annual value of premises occupied for the purpose of his business by the trader himself, *vide supra*, p. 147; and cf. *Gillatt and Watts* v. *Colquhoun*, *supra*, p. 153.

(*s*) *Usher's Wiltshire Brewery* v. *Bruce*, *supra*. Most of the above deductions, together with expenses of replacing fixtures and fittings, had been previously allowed in a case where the findings of fact were such that the Crown were unable to ask for judgment, *Youngs, Crawshay and Youngs* v. *Brooke* (1912), 6 Tax C. 393.

previously by allowing a deduction for losses on loans advanced by brewers to persons who dealt or had agreed to deal with them; it does not appear whether the borrowers were "tied" or "free" or both; but it was found that the making of the loans and advances was essential to the realizing of the brewers' profits (*t*).

The earlier decision that a brewing company may not deduct in each year a portion of a premium paid for the lease of a tied house may still be supported on the ground that such a premium is a capital payment (*u*). It was upon this ground that payments made for the right to call for the surrender of an existing licence, if the licensing justices shall require it as a preliminary to the grant of a new licence, and other expenses of applying for new licences were held not deductible in cases where the new licence was refused. These payments and expenses were held to be investments of capital (*x*); but it is submitted that some part of them at any rate was of a recurring nature, and that the principle of the *Usher's Wiltshire Brewery Case* prevails, even though the endeavour to increase the sale of beer by obtaining a licence in respect of a tied house happens to be unsuccessful in a particular case.

A payment of damages to a guest at an inn for injuries incurred by the fall of a chimney owing to the negligence of the company's servants was disallowed as a deduction because such damages were not incidental to the trade in the inn (*y*).

(*t*) *Reid's Brewery Co., Ltd.* v. *Male*, [1891] 2 Q. B. 1; cf. *Farmer* v. *Scottish North American Trust*, *supra*, p. 141.

(*u*) *Watney* v. *Musgrave* (1880), 5 Ex. D. 241; but the ground upon which this case was actually decided is stated *supra*, p. 156. Cf. *Gillatt and Watts* v. *Colquhoun*, *supra*.

(*x*) *Southwell* v. *Savill Bros., Ltd.*, [1901] 2 K. B. 349.

(*y*) *Strong & Co., Ltd.* v. *Woodifield*, [1906] A. C. 448, *supra*, p. 138. No question arose here as to whether the trade of the inn was that of the brewing company, for the inn was not let, but was managed by their servant.

Depreciation of Machinery and Plant.

The general rule that no allowance for diminished value of assets can be made in ascertaining profits has already been stated (*z*). An exception to this rule is made in respect to machinery and plant; allowances are provided both for diminished value by reason of wear and tear (*a*), and for expenses incurred in replacing what is obsolete (*b*). There is no such allowance in respect of buildings (*c*).

The following matters have been decided or admitted to be "plant" used for the purposes of the trade within these provisions: ships (*d*), a hulk used for coaling ships (*e*), railway locomotives, carriages, wagons and tools (*f*), and tramway rails (*g*). On the other hand, a stallion which serves mares for payment is not plant, and the loss of value due to its age is not loss by reason of wear and tear, within these provisions (*h*); and the bed of a harbour is not "plant" (*i*).

The allowance for diminution of value due to wear and tear is made in favour of the person carrying on the trade, if the machinery or plant belongs to him; or if it is let to him on the terms of his being bound to maintain it and deliver it over in good condition (*k*). He must claim it in making his annual return (*l*).

Where on the other hand the machinery or plant is let on

(*z*) *Vide supra*, pp. 82, 152.

(*a*) Sched. D, Cases I. and II. r. 6, *infra*, p. 436, re-enacting Customs, &c. Act, 1878 (41 & 42 Vict. c. 15), s. 12. See also Income Tax Act, 1918, s. 56, *infra*, *p.* 360, which gives a similar allowance with regard to machinery or plant thrown out of use during the year in consequence of the war; and sect. 53 as to controlled establishments.

(*b*) Rule 7, *infra*, p. 437.

(*c*) *Addie* v. *I. R.* (1875), 2 R. 431; 1 Tax C. 1; *Forder* v. *Handyside* (1876), 1 Ex. D. 233, *supra*, p. 153.

(*d*) *Burnley S.S. Co.* v. *Aikin*, and the other shipping companies' cases cited *infra*, pp. 158—162.

(*e*) *John Hall, Junr. & Co.* v. *Rickman*, [1906] 1 K. B. 311, *infra*, p. 161.

(*f*) *Caledonian Rail. Co.* v. *Banks* (1880), 8 R. 89; 1 Tax C. 487.

(*g*) *London County Council* v. *Edwards* (1909), 5 Tax C. 383.

(*h*) *Derby (Earl)* v. *Aylmer*, [1915] 3 K. B. 374.

(*i*) *Dumbarton Harbour Board* v. *Cox* (1918), 7 Tax C. 147, *supra*, p. 88.

(*k*) Rule 6 (1), (2), *infra*, p. 436.

(*l*) Rule 6 (4), *infra*, p. 436; see Chap. XV.

such terms that the burden of maintaining and restoring it falls on the lessor, the lessee gets no allowance; but the lessor may claim repayment if tax has been deducted against him on payment of the rent; the claim must be made within twelve months after the expiration of the year of assessment (*m*).

The allowance due to obsolescence can be claimed only by a person who uses the machinery or plant for the purposes of his trade, and who has in fact replaced it (*n*).

Method of Calculating Deduction for Wear and Tear.

The deduction for wear and tear is to be "just and reasonable as representing the diminished value" (that is, the diminution of value) "by reason of wear and tear during the year;" the machinery or plant must of course be "used for the purposes of the trade;" the Commissioners are to fix the amount, subject to a reference to the Board of Referees if application is made on behalf of a considerable number of persons engaged in a class of trade (*o*).

The Courts have been very loth to interfere with any decision of the Commissioners as to what is just and reasonable in a particular case. In connection with railway engines, carriages and wagons, actual expenditure on renewals (as well as on repairs) had been deducted; and the Commissioners refused any further allowance in respect of wear and tear; nor would they make any allowance in respect of engines or carriages which were not yet five years old, and had therefore required no repair or renewal, holding that they had to ascertain whether the plant had suffered any diminution in value as part of a going concern, and not a diminution in selling value; the Court declined to say that these refusals were wrong (*p*). Where the method of allowing actual expenses of renewal had been applied for many years by agreement to the rails of a horse

(*m*) Rule 6 (5), *infra*, p. 436; as to deduction of tax out of rent, *vide supra*, p. 55.

(*n*) Rule 7, *infra*, p. 437.

(*o*) Rule 6 (1), (7), *infra*, pp. 436, 437.

(*p*) *Caledonian Rail. Co.* v. *Banks* (1880), 8 R. 89; 1 Tax C. 487.

tramway, and the tramway was converted to an electric system, the Court declined to direct the Commissioners to change the method and to allow a percentage of the value of the horse rails which would have had to be replaced in future years if there had been no conversion (*q*).

With regard to steamships, it has indeed been held in Scotland that the allowance must be equivalent to the actual diminution of value that has taken place in the year and must not be a mere sinking fund (calculated at so much per cent. on the value of the ships) to replace the ships at the end of their life (*r*). But in England the Courts have held that the question is one of fact, and that the Commissioners could not be said to be wrong in law whatever view they took upon it (*s*). It appears, however, that the English Judges, if the question had been for them to decide, would have answered it in much the same way as the Scottish.

Generally speaking, then, the question what is a just and reasonable allowance as representing the diminished value of machinery or plant (including ships) by reason of wear and tear during the year is a question of fact, to be decided from a business point of view. It is doubtful (as indicated above) whether the law prevents this allowance from being calculated as a sinking fund is calculated; be that as it may, the actual depreciation in value that has taken place during the year must be allowed, and in most cases a sinking fund will not be an appropriate method of calculating the amount of that depreciation. The allowance is not intended to replace the owners of the machinery or plant in possession of capital invested in it at the end of its life; but the probable life of the machinery or plant and its probable breaking-up value are relevant considerations in fixing the allowance.

(*q*) *London County Council* v. *Edwards* (1909), 5 Tax C. 383.

(*r*) *Leith, Hull and Hamburg Packet Co.* v. *Musgrave* (1899), 1 F. 1117; 4 Tax C. 80; in the earlier case of *The same* v. *Bain* (1897), 3 Tax C. 560, no decision was come to.

(*s*) *Peninsular and Oriental S. N. Co.* v. *Leslie* (1900), 4 Tax C. 177; *British India S. N. Co.* v. *Leslie, ibid.* 257.

This allowance is made in "charging" the profits, not in "computing" or "estimating" them; and its amount is therefore deducted from the profits as averaged, or from the profits of the preceding year, as the case may be (*t*); but although it may thus have to be deducted from average profits, there is no reason in law necessitating the amount of the allowance itself being calculated on any average of years (*u*).

The aggregate of the allowances made to the person by whom the trade is carried on, must not exceed the actual cost of the machinery or plant to that person, including any capital expenditure by way of renewal, improvement or reinstatement (*x*). It will be observed that this rule refers only to the period during which a particular person (which includes, of course, a company or other corporation) has carried on the trade; if a business, therefore, has been bought as a going concern, it is the price then paid for the machinery or plant which regulates the total of the allowances, and not its prime cost (*x*). The rule leaves the question open whether the machinery or plant for which allowances are claimed is to be treated as a whole, or in separate items; and it may be appropriate to treat, say, each ship owned by a shipping company as a separate matter, and to deal as a whole with, say, the machinery and plant in an engineering workshop.

The rule does not take account of any breaking-up value; and therefore it is the whole cost to the trader that regulates the total of the allowances.

Where the profits in any year are not sufficient for full effect to be given to the allowances for depreciation by

(*t*) *Vide infra*, p. 166.

(*u*) *Cunard S.S. Co.* v. *Coulson*, [1899] 1 Q. B. 865.

(*x*) Sched. D, Cases I. and II. r. 6 (6), *infra*, p. 437. This rule first appeared as sect. 26 (2) of the Finance Act, 1907, and was passed to get rid of the decision in *John Hall, Junr. & Co.* v. *Rickman*, [1906] 1 K. B. 311, that where the trader had in a series of previous years been allowed the whole cost of the ships to him (less breaking-up value), the Commissioners were still bound to make such an allowance as was just and reasonable, without taking into account previous allowances. See also note (*z*) on p. 162.

wear and tear, the allowance or the balance of it may be carried over to the next year (*y*), although the premises have changed hands in the meantime; for this purpose the allowance is not personal to the actual trader (*z*).

Calculation of Allowance for Obsolescence.

The allowance in respect of any plant or machinery that has become obsolete (*a*) is calculated in quite a different way from that in respect of wear and tear. It is a deduction as part of the expenses of the year, and is not therefore a deduction from the profits averaged out over three years, but a deduction in ascertaining the profits of any one year before any averaging takes place. It is, moreover, an allowance for actual expenditure and in no sense an estimate; the deduction can only be made where the plant or machinery has been in fact replaced during the year. Its amount is regulated, not by the cost of the new plant or machinery installed, but by the actual cost of that which has been replaced, less any sum actually realized by its sale, and reduced by the total amount of the allowances made on account of the wear and tear of that plant or machinery. Where these allowances have been made in a lump sum for an aggregate of plant or machinery, it may sometimes be difficult to attribute a definite amount to the particular item that has been replaced.

Averaging of Profits of Trades and Professions.

As a general rule, the tax charged under Schedule D upon the profits of a trade or profession is not assessed upon the actual profits earned in a single year, but the

(*y*) Rule 6 (3), *infra*, p. 436.

(*z*) *Scottish Shire Line, Ltd.* v. *Lethem*, [1912] S. C. 1108; 6 Tax C. 91. The judges drew attention to the difference in language between sub-sect. (2) and sub-sect. (3) of sect. 26 of the Finance Act, 1907, the former being now replaced by para. (3), and the latter by para. (6) of rule 6.

(*a*) Rule 7; the decision against such an allowance in *Burnley S.S. Co.* v. *Aikin* (1894), 21 R. 965; 3 Tax C. 275, is no longer applicable. This allowance can only be claimed by the person who uses, and has replaced, the machinery or plant in question, *vide supra*, p. 159.

profits are calculated upon a "fair and just average of three years"; the three years taken for the purpose of calculating the average are either the three years ending on the last day before the year of assessment on which the accounts of the trade or profession have been usually made up; or the three years ending on the 5th April, that is, on the last day (*b*) preceding the year of assessment (*c*). It is not laid down, nor has the point come up for decision, whether the option is to be that of the Inland Revenue or of the taxpayer (*d*); but the usual practice, where the accounts are in fact made up for yearly periods, is to take the average over three of such accounting periods, and not over three income-tax years.

The amount of profits made in the three years as a whole is taken and divided by three; so that a loss made in the same trade or profession in any year of the three is deducted from the profits made in the other one or two years, before the average is calculated (*e*).

Where, however, the trade or profession has been set up and commenced within either of these three-year periods (each of which ends before the year of assessment) the computation is "made on the average of the profits for one year from the period of the first setting-up" (*f*); and where it has been set up or commenced within the actual year of assessment, either the actual profits earned in that year are taken, or else an average of a period greater or less than one year as may be decided by the Commissioners (*g*). But if in either case the actual profits

(*b*) The year of assessment runs from 6th April to 5th April, inclusive, *supra*, p. 4.

(*c*) Sched. D, rule applicable to Case I.; rule applicable to Case II., *infra*, p. 433. As to assessment where the trade or profession is discontinued, *vide infra*, p. 167.

(*d*) It appears to have been admitted in *S.S. Glensloy Co.* v. *Lethem*, *infra*, that the choice lay with the Inland Revenue.

(*e*) See *Stevens* v. *Durban Roodeport Gold Mining Co.* (1909), 5 Tax C. 402, *infra*, p. 166; and the calculation of the assessment held to be correct in *Pretoria Pietersburg Rail. Co., Ltd.* v. *Elwood* (1906), 6 Tax C. 508, *infra*, p. 179.

(*f*) Sched. D, Cases I. and II. r. 1 (2), *infra*, p. 433; the meaning of this phrase is discussed *infra*.

(*g*) *Ibid.*, read with Case VI. r. 2, *infra*, p. 444.

made in the year of assessment fall short of the profits calculated according to these directions, the charge is (on proof to the satisfaction of the Commissioners) to be reduced to the actual profits; and any overpayment is to be refunded (*h*).

A change in the ownership of the trade by the formation of a partnership into a company is not the setting up or commencing of a trade, if the business is carried on as before (*i*); but it is so if the business carried on by the company is in fact different from that of the partnership (*k*). A company, which owned one ship only, lost it, and afterwards bought another out of the proceeds of the insurance, was held to have carried on one trade from beginning to end, and not to have "set up or commenced" a trade when the second ship started on her first voyage, although this took place after an interval of six-and-a-half months from the loss of the first (*l*).

The computation on "the average of the profits for one year from the period of the first setting up" of the trade means, where the first period for which the accounts are kept by the trader is more than a year and extends into the year of assessment, that the profits shown for that period are to be divided in the proportion which one year bears to the whole of that period, and the assessment made on the proportion for one year (*m*). No other case has been decided upon the words (*n*); but it appears

(*h*) Cases I. and II. r. 8 (1), *infra*, p. 437.

(*i*) *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485, *infra*, p. 167; the provision in rule 1 (2) now in question corresponds with the proviso to first rule of Sched. D, first case, in the Act of 1842, referred to by GROVE, J., at p. 494, and by LINDLEY, J., at p. 500. Cf. also *Bartlett* v. *I. R.*, *infra*, p. 167.

(*k*) *Alex. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, *infra*, p. 167.

(*l*) *Merchiston S.S. Co., Ltd.* v. *Turner*, [1910] 2 K. B. 923; the decision was against the Inland Revenue, who based their assessment on the accounts of the first ship only.

(*m*) *S.S. Glensloy Co.* v. *Lethem*, [1914] S. C. 549; 6 Tax C. 453; the accounts period was 1 year and 69 days, and ended on 20th November, 1912; the year of assessment began on 6th April, 1912.

(*n*) The phrase "for one year" in rule 1 (2) of Cases I. and II. in the Act of 1918 appears in a slightly different place from that in the first rule of the first case in the Act of 1842, which was discussed in *S.S. Glensloy Co.* v. *Lethem*; but this change of order does not appear to affect that decision. See p. 166, note (*q*).

to follow from the decision cited that where the accounts have been made up for one year, and the account-year extends into the year of assessment, the assessment should be made on the whole profits of the account-year. Where the accounts have been made up for a period less than a year (whether the period extends into the year of assessment or not), the profits shown will be averaged out to one year. Where they have been made up for a yearly period or periods ending before the year of assessment, no averaging is required or allowed; the actual profits for the first of the yearly periods are taken.

For the first year of assessment, then—the year in which the trade is actually set up—the assessment is made (according as may be appropriate) upon the actual profits earned in that year, or on the profits of the broken period multiplied out so as to give an estimated profit for a whole year, or (if the accounts have been made up for a longer period than a year) on the profit of that longer period divided out so as to give an estimated profit for one year only (*o*). For the second year of assessment—the year after that in which the trade was actually set up—the assessment is made upon the profits of the completed year which began on the date of actual setting up and ends at some time in the second year of assessment; these profits are ascertained according to one of the methods above described as appropriate to the first year of assessment, and in practice the computation usually results in the same figure being accepted for the second as for the first year of assessment.

For the third year of assessment—the second year after that in which the trade was actually set up—a practice has grown up of taking the total profit of the two years that have elapsed since the date of actual setting up, and dividing by two. There is no warrant for this in the Act; it might have been advisable to provide for taking an average over a period of two years in such a case, but there is no such provision in rule 1 (2) of Cases I. and

(*o*) *S.S. Glensloy Co.* v. *Lethem, supra.*

II. (*p*) or in any other enactment, unless it can be argued that "the average of the profits or gains for one year from the period of the first setting up" means "the average for one year of the profits or gains" from that period. If this was intended, it could easily have been said (*q*).

In the fourth year of assessment, the rule applicable to Case I. comes into play for the first time, and the computation is made on an average of the three previous account years or assessment years, as the case may be; usually on the account years.

Deduction of Expenses in connection with Averaging of Profits.

The subject of expenses deductible in ascertaining the profits of a trade or profession has already been considered at length (*r*). Questions have arisen whether certain deductions of trade expenses are to be made in calculating the profits for the particular year before the average is taken, or whether they are to be disregarded at that stage and deducted from the average of the three years after it has been computed. The answer has been that they are to be deducted in calculating the profits of the particular year; in one case the deduction was the amount of a tax on profits charged by the Government of the Transvaal Colony on the net produce of a gold mine (*s*); and in another the amount of the Schedule A assessment on the lands owned by the taxpayer and used exclusively for the purposes of his trade (*t*). In the former case, the colonial tax was imposed only in the last year of the three, so that

(*p*) *Infra*, p. 433; of course, if the accounts are made up for a two years' period, the profit would be divided by two: *S.S. Glensloy Co.* v. *Lethem*, *supra*.

(*q*) In the proviso to the first rule of the first case in the Act of 1842, the words are "the computation shall be made for one year on the average of the balance of the profits and gains from the period of first setting up," so that even that enactment did not sanction the practice. But the transposition of the phrase "for one year" in the Act of 1918 makes even more striking the discrepancy between the practice and the Act of Parliament.

(*r*) *Supra*, pp. 141 *sqq*.

(*s*) *Stevens* v. *Durban-Roodeport Gold Mining Co., Ltd.* (1909), 5 Tax C. 402; the deduction of colonial tax is not now legally admissible, *vide supra*, p. 151.

(*t*) *General Hydraulic Power Co.* v. *Hancock*, [1914] 2 K. B. 21; as to the right to deduct the amount of a Sched. A assessment, *vide supra*, p. 148.

the result of the decision was that the taxpayer deducted only one-third of its amount for the purpose of assessment, instead of the whole (*u*). In the second case, the Schedule A assessment which the taxpayer sought to deduct was that of the actual year of assessment, when it was considerably higher than in any of the years of average; and his claim to deduct this higher amount failed (*x*).

Discontinuance of Trade or Profession.

Where a trade or profession is discontinued in any year, a person is entitled to be charged only on the actual profits made in the year; and if he has paid tax for the three previous years on a greater amount than the aggregate actual profits of the years, he is entitled to repayment of the excess, on proof to the satisfaction of the Commissioners (*y*).

The sale of a business to a company is not a discontinuance of the business if the same business continues after the transfer (*z*). It may be that a particular portion of the trade is given up (as where a railway company ceases to run its own steamers) but it does not necessarily follow that the trade itself is discontinued (*a*).

Succession.

Where a person ceases within the year of assessment to carry on a trade or profession, and is succeeded in it by another person, the Commissioners are to adjust the assessment, so that the former person and his successor each bears his proper proportion of the tax for the year (*b*).

(*u*) *Stevens* v. *Durban-Roodeport Gold Mining Co., Ltd., supra.*

(*x*) *General Hydraulic Power Co.* v. *Hancock, supra.*

(*y*) Sched. D, Cases I. and II. r. 8 (2), *infra*, p. 438.

(*z*) *Bartlett* v. *I. R.*, [1914] 3 K. B. 686, *infra*, p. 280. Cf. *Ryhope Coal Co.* v. *Foyer, supra*, p. 164. It is often a question of fact whether the business carried on after the transfer is the same business or not: *Alex. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, *infra*, p. 169; but see *Bell* v. *National Provincial Bank, infra*, p. 169.

(*a*) See *Highland Rail. Co.* v. *Special Commrs.* (1885), 2 Tax C. 151, *supra*, p. 89, and *Stockham* v. *Wallasey U. D. C., infra*, p. 170.

(*b*) Sched. D, Cases I. and II. r. 9, *infra*, p. 438. The rules now dealt with apply to companies and other bodies of persons as well as to individuals, see General Rules, r. 1, *infra*, p. 451, and sect. 237, *infra*, p. 406.

The surveyor of taxes has the duty of certifying the facts to the general commissioners within four months after the 5th April following the succession; the determination of the Commissioners on the matter is final, and the proportions adjusted by them are recoverable from each of the persons in question; any over-payment by one of them is to be repaid to him when recovered from the person liable (*b*).

There are, however, two further rules bearing on this matter of succession; a change in a partnership (by death, dissolution, or the admission of a new partner) or any other kind of succession enables the partners after the change, or the person succeeding, to claim amendment or vacating of the assessment, if the change or succession has taken place within the year of assessment or within the period of average (*c*). But such an amendment can only be claimed where (since the change or succession or by reason of it) the profits have fallen short from some specific cause; the cause may have occurred before or after the change, but the falling short of profits must have taken place subsequently to the change and to the occurrence of the cause (*d*). It is for the claimants to prove to the satisfaction of the General Commissioners the existence of the specific cause, and the fact that the profits or gains have fallen short as above indicated. Application must be made within three months after the year of assessment; if necessary, repayment is to be directed of any sum over-paid (*c*). Apart from a falling-off in profits for some specific cause, the assessment is to be made as if there had been no succession, and is charged upon the successor subject to the adjustment above described between predecessor and successor (*e*).

(*b*) See note (*b*) previous page.

(*c*) Sched. D, Cases I. and II. r. 11, *infra*, p. 439; Sched. D, Misc. Rules, r. 3 (1), (2), (3); see especially para. (3), which appears to limit the operation of the exception in rule 11 of Cases I. and II. by prohibiting any amendment except where the profits "*have* fallen short," whereas rule 11 speaks also of cases where the profits "*will* fall short."

(*d*) *I. R.* v. *Farie* (1878), 6 R. 270, *supra*, p. 78.

(*e*) Cases I. and II. r. 11; Misc. Rules, r. 3 (3).

The question whether a succession has taken place may be one of pure fact; and the Scottish Court refused to review the decision of Commissioners, where they had found that a company carrying on the business of distilling and blending whisky, which had acquired the business of an older company including a distillery (which the older company had ceased to work), and had recommenced the working of that distillery, was not carrying on a business identical with that of the older company, and that therefore there had been no succession (*f*). On the other hand, a large banking company which had acquired the business of a local bank and made it a branch of its own wide-spreading business was held, by the English Court, as a matter of law to have succeeded to the business of the local bank, and to be bound in the three years following the succession to include the profits of the local bank in computing the average of its own (*g*). A company acquiring the business of a partnership and carrying it on succeeds to that business (*h*). But the mere sale of a ship by one set of owners to another, unaccompanied by any transfer of debts, account books or lists of customers, does not make the purchasers succeed to the business of the sellers (*i*).

There can be no succession to a part of a concern; but if one person carries on two separate businesses, another person may succeed to one of those businesses, although he does not acquire the other; and a local authority, which acquired a tramway undertaking from a united tramway and omnibus company, was held to be the successor of the company as to the tramway undertaking, although

(*f*) *A. Ferguson & Co., Ltd.* v. *Aikin* (1898), 4 Tax C. 36, *supra*, p. 167.

(*g*) *Bell* v. *National Provincial Bank of England, Ltd.*, [1904] 1 K. B. 149. Rule 11 corresponds to the fourth rule of Cases I. and II. in Sched. D of the Act of 1842.

(*h*) *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485, *supra*, p. 164. Cf. *Bartlett* v. *I. R.*, [1914] 3 K. B. 686, *infra*, p.

(*i*) *Watson Bros.* v. *Lothian* (1902), 4 F. 795; 4 Tax C. 441; as to single ship companies, see also *Farrell* v. *Sunderland S.S. Co., Ltd.* (1903), 4 Tax C. 605, *infra*, p. 246, and *Merchiston S.S. Co., Ltd.* v. *Turner*, and *S.S. Glensloy Co., Ltd.* v. *Lethem*, *supra*, p. 164.

it had not acquired the company's omnibus concern, and although it had converted the tramways from horse to electric traction and had greatly extended them (*k*).

Specific Cause.

In order that a person succeeding to a trade or profession may get relief, the specific cause for the falling short of the profits below the average as ordinarily computed must be "something unusually exceptional and extraordinary. . . . An extraordinary depression in the iron and coal trades, which reduces the profits of a concern to less than half its former profits, is properly called a 'specific cause'" (*l*). "The ordinary fluctuation incident to every business" is not such a specific cause (*m*).

"A thing is specific as contrasted with something else, and whether it is contrasted with trade in general or trade in a locality, or whether it means something confined to a particular mine, is all more or less doubtful, and as the Commissioners find that the profits have fallen off by a cause ['an extraordinary depression in the iron and coal trades'] which is specific or may be specific, depending upon the sense in which the word was used, I am not prepared to say the cause is not specific" (*n*).

The payment of excess profits duty is not "a specific cause" for the purposes of Rule 3 of the Miscellaneous Rules of Schedule D (*o*).

Loss.

Where a person sustains a loss in any trade or profession he may, if he has paid the tax, apply for an adjustment of his liability and obtain a certificate for repayment of the tax upon income equal to the amount of loss. The application must be made within six months after the year of

(*k*) *Stockham* v. *Wallasey U. D. C.* (1907), 71 J. P. 244, *supra*, p. 167.

(*l*) *I. R.* v. *Farie*, *supra*, p. 168; *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485, *supra*, p. 78; see per GROVE, J., at p. 496.

(*m*) *Ibid.*, at p. 496.

(*n*) *Ibid.*, per LINDLEY, J., at p. 501.

(*o*) Sched. D, Cases I. and II. r. 4 (2), *infra*, p. 435.

assessment either to the General or Special Commissioners by notice in writing given to the surveyor (*p*). The trade as a whole must have resulted in a loss; repayment cannot be claimed because a loss was made on a particular transaction (*q*).

On the other hand, the amendment or vacating of the assessment before tax has been paid can only be obtained on the ground of loss where this is due to a "specific cause" (*r*) by which the person in question has been deprived of, or has lost, the profits computed on an average of years or on one year, as the case may be (*s*); the application in such circumstances can be made to the General Commissioners only, and must be made within three months after the end of the year of assessment (*t*).

Loss Due to the War.

Where a person (including a company or other body of persons) assessed under Schedule D has suffered a diminution of profits due to circumstances attributable directly or indirectly to the war, a special provision is made for relief (*u*) which is not dependent on the existence of a "specific cause" as in the rule last cited; and that rule does not apply.

If the profits for any year of assessment as to which this provision is continued in force (*x*) are found to have fallen

(*p*) Sect. 34, *infra*, p. 351. As to the procedure, *vide infra*, p. 323. The Commissioners' decision is final.

(*q*) *R.* v. *City of London Commissioners* (1904), 91 L. T. 94. Such a loss should, of course, be taken into account in arriving at the assessment in the first instance, see *e.g.*, *Reid's Brewery Co.* v. *Male*, [1891] 2 Q. B. 1, *supra*, p. 157.

(*r*) *Vide supra*, p. 170.

(*s*) *Vide supra*, p. 162.

(*t*) Sched. D, Misc. Rules, r. 3 (1), (2), *infra*, p. 444. The operation of this rule in cases of discontinuance, succession, death and bankruptcy is considered at pp. 168—170, 260, together with sect. 34; since that section has been on the statute book (it first appeared as sect. 23 of the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8), rule 3 appears to apply only as stated in the text. Where no "specific" cause of loss can be proved, it is advisable to pay the tax and apply for repayment under sect. 34.

(*u*) Sect. 43, *infra*, p. 355.

(*x*) For the year ending April 5th, 1921, it is continued in force by the operation of Finance Act, 1919, s. 15, *infra*, p. 463, and Finance Act, 1920, s. 14 (2), *infra*, p. 467.

short of the sum on which the assessment was made, the assessment is to be amended, and any overpayment to be repaid; provided (*y*) that the profits of the year are proved to be less than the average of that year and the two years preceding, and that the relief does not exceed the difference between the profits of the year and of that average of years. Upon the proof of these facts to the Commissioners, they are to correct the assessment in accordance with the actual figures, subject to this maximum limit (*z*). It is, however, only the diminution attributable to the effects of the war that is to be brought into the calculation, and any diminution due to other causes must be left out of account. In order to arrive in such a case at the profits as diminished by reason of the war only, recourse has been had to a somewhat artificial calculation; the profits of the year of assessment were taken as the average of the profits of the three previous years less the diminution due to the war; the actual profits of the two previous years were taken; and these three sums, one fictitious and the other two actual, were added together and divided by three, the result being the amount to which the assessment of the year in question was to be amended (*z*).

The application must be made to the General Commissioners within the year, or as soon after the end of the year as is reasonably practicable; it is for the General Commissioners to decide whether this requirement has been fulfilled in any particular case (*a*). They have power to state a case on a point of law (*b*).

(*y*) Sect. 43 (1), proviso (b); this proviso does not apply to persons who have served abroad in various capacities during the war, see sub-sect. (2).

(*z*) *Yuanmi Gold Mines, Ltd.* v. *Eborall*, [1920] 1 K. B. 529, which was decided upon the sections replaced by sect. 43 of the Act of 1918. The Commissioners are not given a discretion to deduct a purely arbitrary figure.

(*a*) *R.* v. *Special Commrs.* (1888), 21 Q. B. D. 313; *Russell* v. *North of Scotland Bank* (1891), 18 R. 543; 3 Tax C. 14.

(*b*) Sect. 43 (3), *vide infra*, p. 356.

Loss in one Trade set off against Profit in another.

Where a person (*c*) carries on (solely or in partnership) different trades in different places, a separate assessment is made in respect of each trade (*d*). But if a loss is made in one trade, it may be deducted or set off against the profits made in a distinct trade (*e*). The right to set off a loss depends upon both trades being carried on for commercial purposes and on commercial principles, and with a view to profit (*f*). Thus, a municipal corporation cannot set off the expense of such services as the disposal of sewage, industrial schools, baths or parks against the profits derived from markets (*g*) or from trading undertakings, such as tramways or electric light. A society for the diffusion of religious literature cannot deduct from the profits of bookseller's shops the balance of expenses over receipts of a colportage agency, one of whose objects is to administer spiritual advice (*f*); and a society for the improvement of young men cannot deduct from the profits of a restaurant a debit balance incurred in respect of educational classes, a gymnasium, or a publication department (*h*).

The loss which it is desired to set off must have been incurred in carrying on a trade the profits of which are charged under Schedule D; and a seed merchant was not allowed to set off against the profits of the seed business the loss incurred on a farm, because he was chargeable in respect of the farm under Schedule B (*i*). A commercial

(*c*) Including "body of persons," General Rules, r. 1, *infra*, p. 451; sect. 237, *infra*, p. 406.

(*d*) Sched. D, Cases I. and II. r. 16, proviso, *infra*, p. 440.

(*e*) Rule 13, *infra*, p. 440; for this purpose, though the trades must be distinct, they need not be carried on at different places. This rule corresponds with the first part of sect. 101 of the Act of 1842, but the language is shorter. The question whether two sets of operations form distinct trades has been considered *supra*, pp. 110, 111.

(*f*) *Religious Tract and Book Society* v. *Forbes* (1896), 23 R. 390; 3 Tax C. 415, *supra*, p. 106.

(*g*) *In re Birmingham Corpn.* (1875), 1 Tax C. 26, *supra*, p. 86.

(*h*) *Grove* v. *Y. M. C. A.* (1903), 4 Tax C. 613.

(*i*) *Brown* v. *Watt* (1886), 23 S. L. R. 403; 2 Tax C. 143. If he had elected to be charged under Sched. D in respect of the farm (*vide supra*, p. 98), the decision might perhaps have been different.

traveller was not allowed to deduct from his profits, as such, expenses incurred in regard to an invention which had no connection with the trade in which he was a traveller (*k*).

A claim for a set-off of this kind must be made in connection with the assessment by appeal or otherwise; it is not a matter for subsequent application and adjustment as in cases of succession, &c.

It seems possible that the rule allowing deductions as it now stands may allow a set-off as between two concerns assessed under No. III. of Schedule A, provided that both are carried on upon commercial principles with a view to profit (*l*).

Loss in connection with Allowance or Deduction.

When relief has been granted in the cases where profits of the year of assessment fall short, or in cases of deprivation of or loss of profits from some specific cause, it is the reduced assessment that must be brought in to total income for claiming allowance or deduction (*m*). Conversely, if the assessment has become final and conclusive, it is only by applying for an allowance or adjustment under the provisions dealt with above, that diminution of income or loss can be employed to reduce the total income for purposes of allowance or deduction with regard to income tax (*n*), or for purposes of ascertaining or measuring liability with regard to super-tax (*o*).

Profits of Weekly Wage-Earners.

Weekly wage-earners employed by way of manual labour (as distinguished from persons employed as clerks, typists, draftsmen, or in any other similar capacity) are charged in respect of the wages of such employment upon

(*k*) *Grimes* v. *Lethem* (1898), 3 Tax C. 622.
(*l*) See remarks on *Wakefield R. D. C.* v. *Hall*, *supra*, p. 73.
(*m*) Sect. 23, *infra*, p. 344; *vide supra*, p. 22.
(*n*) Sect. 18, *infra*, p. 343; *vide supra*, p. 27.
(*o*) Sect. 5 (2), *infra*, p. 340; *vide infra*, p. 280.

the actual amount of their wages for each quarter; the assessment is made quarter by quarter. The Commissioners of Inland Revenue, jointly with the General Commissioners, are the final judges on any question whether a person is within this rule or not (*p*).

(*p*) Sched. D, Cases I. and II. r. 2, *infra*, p. 433. For procedure as to assessment, and allowance and deduction in connection with such wage-earners, *vide infra*, pp. 305, 337. See also p. 132, note (*a*).

CHAPTER VIII.

INTEREST, ANNUITIES, DISCOUNTS, ETC.; SCHEDULE D, CASE III.

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Scope of Case III.

"ALL interest of money, annuities and other annual profits or gains not charged under Schedule A, B, C, or E" (and not specially exempted from tax)(*a*), are charged under Schedule D(*b*). Case III. is described as embracing "profits of an uncertain value," and "other income described in the rules applicable to this case," a description which, taken by itself, is somewhat misleading, for those rules extend the tax to six classes of annual payments of the nature of interest, annuities, discounts and so forth(*c*); to the income of investments of foreign life assurance companies(*d*); and to certain profits of cattle and milk dealers(*e*). These last may be "of an uncertain

(*a*) *Vide infra*, p. 268.

(*b*) Sched. D, 2, *infra*, p. 432.

(*c*) Sched. D, rules applicable to Case III. r. 1, *infra*, p. 441. By reason of these rules, Case III. in the Act of 1918 is considerably wider in its scope than the third case of Sched. D in the Act of 1842.

(*d*) Rule 3, *infra*, p. 441.

(*e*) Rule 4; the effect of this rule is stated in Chap. IV. at p. 95, and it is

value"; but that can scarcely be said of the rest, at any rate as compared with the profits charged under Cases I. and II.

Case III. can, therefore, best be considered in relation to each particular rule. But it may here be pointed out that interest payable out of public revenues in the United Kingdom or elsewhere is charged under Schedule C (*f*) and not under Schedule D; and that annuities payable by the Crown or out of the public revenue of the United Kingdom are charged under Schedule E (*g*) and not under Schedule D.

Income from securities, stocks and shares in any place out of the United Kingdom is charged under Cases IV. and V., and not under Case III. (*h*).

Further, the tax chargeable under Case III. is, speaking generally, paid by deduction "at the source" and not by direct assessment (*i*). The rules, therefore, which give the payer of interest, &c. the right, and impose on him the obligation, to deduct tax in making the payments due from him, have an important bearing on those of Case III. (*k*).

Where the tax in respect of any of the sources of income described under Case III. cannot by law be deducted at the source, and is directly assessed (a return having to be made for that purpose) (*l*), the amount assessable is that received in the preceding assessment year, or the preceding year for which the accounts are usually made up (*m*). Where, on the other hand, the payer is entitled

unnecessary to refer further to it here. The reason of its inclusion in Case III. is probably that the profits of the preceding year may be assessed, instead of taking an average of years as under Cases I. and II.

(*f*) See Chap. V.

(*g*) See Chap. XI.

(*h*) See Chapter IX.

(*i*) Cf. *Purdie* v. *Rex*, [1914] 3 K. B. 112, and the remarks thereon in *Brooke* v. *Inland Revenue*, [1917] 1 K. B. 61; [1918] 1 K. B. 257, *infra*, p. 244.

(*k*) *Vide infra*, p. 181.

(*l*) *Vide infra*, p. 288.

(*m*) Sched. D, Case III. r. 2, *infra*, p. 441. This matter is of some importance to the holder of those War Loans and Exchequer Bonds, the tax in respect of which is not deducted at the source.

to deduct tax and fails to do so previous to the passing of the income-tax Act for the year, the payee is liable to direct assessment under Case VI. on the profits of the year (*n*).

The Source of Income must exist in the Year of Assessment.

Although the income on which tax is charged under Case III. is measured by the profits of the preceding year, no person is liable to be assessed under that Case unless he has a source of such income in the year of assessment (*o*). If, therefore, a company has carried on transactions involving discounts in one year, but none in the next year, it is not taxable in the second year in respect of those transactions (*o*).

This decision does not affect any liability to taxation at the source; but in the case of any War Loan Stock or Exchequer Bonds, the interest on which is not deducted before payment, it appears to follow that a person who has parted with his holding before the commencement of the financial year cannot be assessed in respect of the interest received in the preceding year (*p*).

Interest of Money.

The tax extends under Case III. to "any interest of money whether yearly or otherwise . . . . or whether the same is received and payable half-yearly or at any shorter or more distant periods" (*q*). Other words make it immaterial whether the interest is payable in this country or not, and in what manner the liability to pay is created (*q*). The rule which gives the payer the right to deduct tax upon interest paid out of taxable profits gives that right only in respect of "yearly interest" (*r*), thus differing from the rule of Case III. just cited; but where the pay-

(*n*) *Infra*, p. 224.

(*o*) *National Provident Institution* v. *Brown*, [1920] 3 K. B. 35; *vide supra*, p. 5.

(*p*) But the Lords Justices refrained from expressing a view on this point.

(*q*) Sched. D, Case III. r. 1 (a), *infra*, p. 441.

(*r*) *Vide infra*, p. 181, and General Rules, r. 19 (1), *infra*, p. 455.

ment is not made out of taxable profits, the right to deduct tax applies to "any interest of money" (*s*).

Interest, other than yearly, paid out of taxable profits, is therefore taxed by direct assessment (*t*), and not by deduction at the source. Again, if a power to deduct at the source is not exercised, the recipient of the interest is nevertheless liable to be assessed directly (*u*).

A building society is taxable upon the interest received from its members, to whom it lends money upon security of freeholds, leaseholds, &c., even though the interest is payable weekly; for the charge of tax is upon all interest whether annual or not (*x*). For the same reason the tax is charged on bank deposits (*y*), and upon interest ordered to be paid in respect of an amount recoverable under a judgment (*z*).

Interest guaranteed by a foreign Government to a railway company during the period of construction of the railway is taxable as a whole, even though a part of it must be devoted by the company to the redemption of its debenture capital (*a*); interest payable during con-

(*s*) *Vide infra*, p. 189, and General Rules, r. 21, *infra*, p. 455.

(*t*) Sched. D, Misc. Rules, r. 1, *infra*, p. 444.

(*u*) *Glamorgan Quarter Sessions* v. *Wilson*, [1910] 1 K. B. 725, *infra*; it was also decided in that case that Quarter Sessions as a compensation authority under the Licensing Acts are liable to assessment. On this point, see also *Matthews* v. *Cork C. C.*, [1910] 2 I. R. 521; 5 Tax C. 545; and p. 137, *supra*.

(*x*) *Leeds Benefit Building Society* v. *Mallandaine*, [1897] 2 Q. B. 402; the members did not deduct tax in making their payments. These payments included instalments of principal as well as interest, but no question arose on this as it did in *Sec. of State for India* v. *Scoble*, *infra*, p. 188. See also *L.-A.* v. *Edinburgh Corpn.* (1903), *infra*, p. 182.

(*y*) *Glamorgan Quarter Sessions* v. *Wilson*, *supra*; *Matthews* v. *Cork C. C.*, *supra*; *College of Preceptors* v. *Jenkins* (1919), 7 Tax C. 162. See *Goslings and Sharpe* v. *Blake*, *infra*, p. 182, as to the banker's right to deduct.

(*z*) *Schultze* v. *Bensted*, [1916] S. C. 188; 7 Tax C. 30.

(*a*) *Blake* v. *Imperial Brazilian Railway* (1884), 2 Tax C. 58; *Nizam State Rail. Co.* v. *Wyatt* (1890), 24 Q. B. D. 548; in the latter case the annual payment was called an "annuity." See also *Sec. of State* v. *Scoble*, *infra*, p. 188. A peculiar case relating to arrears of guaranteed interest will be found in *Pretoria-Pietersburg Rail. Co.* v. *Elwood* (1908), 6 Tax C. 508, *supra*, p. 163.

struction by contractors (*b*), or by the railway company itself (*c*) is similarly taxable.

It has already been seen (*d*) that in the case of a company whose business is bound up with the holding of investments (such as an insurance office, or an investment corporation), the Crown has an option either to tax the company on its profits under Case I., or on the income derived from its investments under Case III., Case IV., or Case V.; the Crown naturally levies the tax according to that method which yields the larger amount. It is entitled to levy the tax on any interest received by such a company, where tax on that interest has not been deducted by the payer (*e*). A county council is under a similar liability to pay tax on interest received from other local authorities to which it has made loans, although those loans are made out of money which the county council has itself borrowed and upon which it has to pay interest (*f*).

Interest payable out of local rates is taxable (*g*); and a local authority is liable to pay tax on the interest paid upon a loan raised upon the security of its rates for the purpose of erecting municipal buildings, in spite of the fact that it pays tax under Schedule A (*h*) on the annual value of the buildings (*i*).

Interest, dividends, or other annual payments payable

(*b*) *City of London Contract Corpn.* v. *Styles* (1887), 2 Tax C. 239, *supra*, p. 142; *Surbiton U. D. C.* v. *Callender Cable Co.*, *infra*, p. 183.

(*c*) *L.-A.* v. *Forth Bridge Rail. Co.* (1890), 28 S. L. R. 576; 3 Tax C. 1; *vide infra*, p.. 190.

(*d*) *Vide supra*, pp. 129, 130.

(*e*) *Clerical, Medical and General, &c.* v. *Carter* (1889), 22 Q. B. D. 444, *supra*, p. 130; *Revell* v. *Edinburgh Life, &c.* (1906), 5 Tax C. 221, *supra*, p. 130.

(*f*) *London County Council* v. *Grove* (1896), 3 Tax C. 508. See also *L. C. C.* v. *A.-G.*, [1901] A. C. 26; *A.-G.* v. *L. C. C.*, [1907] A. C. 131, *infra*, p. 194.

(*g*) Sched. D, Misc. Rules, r. 6, *infra*, p. 446; there is nothing elsewhere in the Act to suggest that interest, in order to be taxable, must be paid out of profits; the only practical effect of this rule is therefore to make the officer of the paying authority liable in the first instance. There is nothing to prevent the authority deducting the tax against the recipient of the interest, *vide infra*.

(*h*) *Vide supra*, p. 37.

(*i*) *Aberdeen Commrs. of Supply* v. *Russell* (1890), 17 R. 942; 2 Tax C. 643; see *A.-G.* v. *L. C. C.*, [1907] A. C. 131, *infra*, p. 194.

out of or in respect of the stocks, funds, shares or securities of any foreign or Colonial company, society, adventure or concern, and entrusted to a person in the United Kingdom for a payment to another person in this country, are charged by the Special Commissioners in the hands of the person who makes the payments. He pays the tax, and deducts it against the recipient of the interest, &c. (*k*). But if the securities or the stocks or shares are "in any place out of the United Kingdom," the charge will be made under Case IV. or Case V., whichever is applicable (*l*).

Yearly Interest: Deduction of Tax.

In computing the profits of a trade or profession, a deduction for any annual interest, annuity or other annual payment payable out of profits, is prohibited (*m*). But where yearly interest is paid wholly out of taxable profits (either as a charge or reservation imposed by deed or will or otherwise, or as a personal debt or contractual obligation), the payer is entitled to deduct the tax on the interest in making the payment, and to retain the tax for his own benefit, because he has already been assessed upon the profits out of which the payment is made; no separate assessment is made upon the payee in respect of the interest. The interest as between payer and payee is treated as having been paid in full (*n*). Any agreement for payment in full without allowing such deduction is void (*o*).

The right to deduct tax on interest paid out of taxable profits applies to yearly interest only; though all interest is chargeable to income tax, interest for shorter periods

(*k*) Sched. D, Misc. Rules, r. 7, *infra*, p. 446, read with the second set of rules in Sched. C, *infra*, p. 430; see Chap. V.

(*l*) See Chap. IX.

(*m*) *Vide supra*, p. 141.

(*n*) General Rules, r. 19 (1), *infra*, p. 455. This rules corresponds with sect. 40 of the Income Tax Act, 1853. As to deduction of tax on payment of interest out of untaxed profits, *vide infra*, p. 189; on payment of rent, *vide supra*, p. 55. Tender of mortgage interest less income tax is proper legal tender: *Graham* v. *Seal* (1919), 88 L. J. Ch. 31.

(*o*) Rule 23 (2), *infra*, p. 456; *vide infra*, p. 185.

than a year is assessable only in the hands of the payee (*p*); but it makes no difference whether the yearly interest is payable half-yearly or at any shorter or more distant periods (*q*).

"Yearly interest" means interest which may become payable at a future date, and is calculable by periods of not less than a year, even though the obligation to pay it may cease before the year is out (*r*). Tax is, therefore, deductible on paying interest on the purchase-money of real estate after the date fixed for completion (*s*), and on paying interest due under a mortgage-deed, and the interest due on arrears of such interest, where these are specified in the deed (*t*), as well as on paying compound interest due under a mortgage where the deed provides in general language for payment of compound interest with yearly rests (*u*).

On the other hand, interest upon short loans by bankers to customers for periods less than a year (*e.g.*, for three months) which are not intended to be continued for a long period, is not yearly interest within this rule; the bank's customers cannot deduct tax in paying the interest, and the interest is included in the profits of the bank on which it is liable to pay tax (*x*). Where the borrower, however, has mortgaged a certain security with his banker for a fixed sum, he may deduct the tax on paying interest (*y*); for here the loan is intended to continue, and the interest is more than yearly. There is nothing intended to be

(*p*) *Leeds, &c. Building Soc.* v. *Mallandaine, supra,* p. 179.

(*q*) Rule 19 (1).

(*r*) *In re Craven,* [1907] 2 Ch. 448, per WARRINGTON, J., at p. 457; see decisions on similar points with regard to annuities and other annual payments, *infra,* p. 186.

(*s*) *Bebb* v. *Bunny* (1854), 1 K. & J. 216.

(*t*) *In re Craven, supra;* but no deduction is allowable in respect of repayments of principal: *Ex parte Wythes* (1885), 53 L. T. 492. Deduction may be made on payment of arrears: *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100; *infra,* p. 197.

(*u*) *In re Morris,* [1921] 1 Ch. 172.

(*x*) *Goslings and Sharpe* v. *Blake* (1889), 23 Q. B. D. 324; the case is different where the interest on short loans is not wholly payable out of taxed profits: *L.-A.* v. *Edinburgh Corpn.* (1903), 6 F. 1, *infra,* p. 190.

(*y*) *Mosse* v. *Salt* (1862), 32 L. J. Ch. 756.

permanent about a judgment debt, and in paying interest on that, the tax is not deductible (*z*); nor in paying interest on paving expenses under the Public Health Acts (*a*). Interest allowed by a bank to a customer upon his fluctuating daily balances is not "yearly interest" (*b*).

Tax is deductible against payments of interest by contractors during construction of works (*c*).

According to the practice of the Court of Chancery, the deduction was not allowed in respect of interest on purchase-money paid into Court (*d*); but was allowed on the payment of interest on a bill of exchange in an administration action (*e*). The Scottish Courts have refused to allow any deduction of tax on interest due under a decree of reduction of a sale of shares in a company (*f*).

Interest on Advances by Banks, Stockbrokers and Discount Houses.

Where interest is payable in the United Kingdom on an advance made by a bank carrying on a *bonâ fide* banking business in this country, and the interest is paid "out of profits or gains brought into charge" (*g*), but the person who has paid the interest has done so without deduction of tax, he is entitled to repayment of the tax upon the interest so paid (*h*). This provision, while it applies in the more common cases where interest on advances made by banks is not yearly interest and no deduction is admissible (*i*), applies also even if the interest is yearly interest, so that

(*z*) *In re Cooper*, [1911] 2 K. B. 550.

(*a*) *Mayor, &c. of Gateshead* v. *Lumsden*, [1914] 2 K. B. 883.

(*b*) *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381; *vide infra*, p. 269; rule 19 (1) and the provisions for deduction of tax were not in question in that case.

(*c*) *Surbiton U. D. C.* v. *Callender Cable Co.* (1910), 8 L. G. R. 244, *supra*, p. 180.

(*d*) *Holroyd* v. *Wyatt* (1847), 1 De G. & S. 125; *Dawson* v. *Dawson* (1847), 11 Jur. 984; *Humble* v. *Humble* (1849), 12 Beav. 43.

(*e*) *Dinning* v. *Henderson* (1850), 3 De G. & S. 702; but see note (*i*).

(*f*) *Dunn* v. *Chambers* (1898), 25 R. 688.

(*g*) This expression includes every kind of taxable income: *London County Council* v. *A.-G.*, [1901] A. C. 26, *infra*, p. 189.

(*h*) Sect. 36 (1), *infra*, p. 352.

(*i*) See *Goslings and Sharpe* v. *Blake*, *supra*, p. 182.

the payer might have deducted tax although he has not in fact done so (*k*). Its application does not depend, as in the provision next discussed, on the inclusion of the interest in the returns of the payee (*l*). The repayment must be claimed, within three years after the end of the year to which it refers (*m*), before the Special Commissioners, and the facts proved to their satisfaction (*n*).

Where interest other than yearly interest (*o*) is paid in the United Kingdom on an advance made by a member of a stock exchange or by a discount house in this country, and is paid "out of profits or gains brought into charge" (*p*), the payer is entitled to a like repayment (*q*). The repayment must be similarly claimed before, and the facts proved to the satisfaction of, the Special Commissioners; but they cannot allow the claim, unless the Commissioners of Inland Revenue are of opinion that the payer of the interest is *bonâ fide* carrying on the business of a member of a stock exchange in the United Kingdom, or of a discount house in this country, and are satisfied that the interest has been or will be included in the payee's income tax return; it must have been paid without deduction (*r*).

Annuities.

"Any annuity or other annual payment" is assessable under Case III. of Schedule D (*s*); but annuities of the nature of interest on investments paid out of public revenues are taxed under Schedule C (*t*), and annuities of the nature

(*k*) See *Mosse* v. *Salt*, *supra*, p. 182; the words "not being yearly interest" in sub-sect. (2) do not appear in sub-sect. (1); and a comparison of sect. 22 of the Finance Act, 1915, and sect. 15 of the Finance Act, 1917, the respective predecessors of these sub-sections, shows that the absence of these words is intentional.

(*l*) See note (*k*).

(*m*) Sect. 41, *infra*, p. 355.

(*n*) Sect. 36 (1).

(*o*) See *Goslings and Sharpe* v. *Blake*, and the cases cited therewith, *supra*, pp. 182, 183.

(*p*) See note (*g*), *supra*.

(*q*) Sect. 36 (2).

(*r*) On the question whether the decision of the Inland Revenue Commissioners is final on such a point, *vide infra*, p. 323.

(*s*) Sched. D, Case III. r. 1 (a), *infra*, p. 441.

(*t*) *Supra*, p. 100.

of pensions payable by the Crown or out of public revenues of the United Kingdom are taxed under Schedule E (*u*).

An annuity of the nature of a pension which is payable neither by the Crown, nor out of public revenues, is taxed under Schedule D; such is a retiring annuity paid to a minister of the Church of Scotland out of a voluntary fund (*x*). Annuities paid by way of alimony under deeds of separation are similarly taxable (*y*), as well as annuities payable under a will (*z*) or in accordance with the terms of compromise of a probate action (*a*). But the more important kinds of annuity taxed under Schedule D are those which are paid as the profits of investments (as where annuities are granted by an insurance or investment company (*b*)), and those which are paid as part of the consideration for purchase of an undertaking, and so on.

Where an annuity or other annual payment is paid out of taxable profits, the payer has the same right to deduct and retain tax as he has with regard to yearly interest (*c*); where it is not wholly so paid, he is bound to deduct tax and account for it to the Crown (*d*). These rights cannot be defeated by any agreement to the contrary (*e*). A voluntary payment, such as an allowance made by a father to a son, does not make the recipient taxable; but if such an allowance is paid under a deed or contract, such as a marriage contract in Scotland, the father has a right to

(*u*) *Infra*, p. 227.

(*x*) *Duncan's Exors.* v. *Farmer* (1909), 5 Tax C. 417, *infra*, p. 227; *Udney* v. *East India Company* (1853), 22 L. J. C. P. 260, was decided before the Schedules took their present shape, and is no longer of importance.

(*y*) *Warren* v. *Warren* (1895), 43 W. R. 490; *Dalrymple* v. *Dalrymple* (1902), 4 F. 545; *In re Barry's Trusts*, [1906] 1 Ch. 768; 2 Ch. 358; *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 598; *Blount* v. *Blount*, [1916] 1 K. B. 230; *In re Janes' Settlement*, *infra*, p. 186; *In re Hatch*, [1919] 1 Ch. 351. An order of the Divorce Division may direct that the alimony to be paid under it shall be calculated free of income tax; *Frankfort* v. *Frankfort* (1845), 4 Notes of Cases, 280; but that practice does not affect the question where the payment is made under a covenant. *In re Barry's Trusts; Blount* v. *Blount, supra; In re Shaw*, [1918] P. 47. See also *Brooke* v. *Price*, [1917] A. C. 115, *infra*, p. 200.

(*z*) *In re Cooper*, [1917] W. N. 385.

(*a*) *In re Shaw*, [1918] P. 47, *supra*.

(*b*) See *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, *supra*, p. 141.

(*c*) *Vide supra*, pp. 181, 182, and General Rules, r. 19 (1), *infra*, p. 455.

(*d*) *Vide infra*, p. 189.

(*e*) Rule 23 (2), *infra*, p. 456.

deduct tax; and if he does not in fact do so, the amount of the tax is a gift to the son (*f*).

Life insurance premiums are not subject to assessment as annual payments, and income tax is not deductible on paying them (*g*).

The nature of various so-called "annuities" has been discussed both in relation to the question whether the annuity is directly assessable to the tax, and on the question whether the payer is entitled to deduct tax against the recipient. The same considerations arise with regard to both questions, and it may be said broadly that in so far as a so-called "annuity" represents the payment of capital by instalments it is not within the purview of the income tax, either for purposes of direct assessment or of deduction of the source (*h*). It is not conclusive that the payment is called an annuity in the agreement between the payer and the recipient; the real nature of the transaction must be looked at (*i*).

Other "annual payments" must be *ejusdem generis* with annuities in order to come within the rule (*k*). Accordingly, a payment of the nature of a rent or profit arising out of land is not taxable under Schedule D, but under Schedule A (*l*). Again, an allowance paid under a will or a deed of separation may be an "annuity or annual payment" (*m*) although it is made up (in accordance with the provisions of the will or deed) of fixed payments of so much each month (*n*), or so much each week (*o*).

(*f*) *Dalrymple* v. *Dalrymple* (1902), 4 F. 545, *infra*, p. 189.

(*g*) *Howe (Earl)* v. *I. R.*, [1919] 2 K. B. 336, *infra*, p. 282.

(*h*) *Oswald* v. *Kirkcaldy Magistrates*, [1919] S. C. 147, affords a simple illustration of this principle; the payments were held to be instalments of the price of a sewer.

(*i*) *Nizam State Rail. Co.* v. *Wyatt* (1890), 24 Q. B. D. 548, *supra*, p. 179; *Sec. of State for India* v. *Scoble*, *infra*, p. 187. The dicta to the contrary in *Foley* v. *Fletcher*, *infra*, p. 187, were overruled in the latter case.

(*k*) *Foley* v. *Fletcher* (1858), 28 L. J. Ex. 100.

(*l*) *Hill* v. *Gregory*, [1912] 2 K. B. 61, *supra*, p. 66; this point was not fully considered in the earlier case of *Taylor* v. *Evans*, *infra*, p. 187. The provisions for deduction of tax on payment of rent are dealt with, *supra*, p. 55.

(*m*) *Vide supra*, p. 59.

(*n*) *In re Cooper*, [1917] W. N. 385; cf. *In re Craven; Bebb* v. *Bunny*, *supra*, p. 182.

(*o*) *In re Janes' Settlement*, [1918] 2 Ch. 54.

Annuities, &c. payable by Institutions in India.

Any annuities, pensions or other annual sums payable out of the funds of any institution in India (*p*) to any person in the United Kingdom through some other person in the United Kingdom are chargeable by the Special Commissioners under Schedule D (*q*), and the second set of rules in Schedule C applies (*r*); that is to say, the person entrusted with making the payment of the annuities, &c. pays the tax and deducts it against the annuitants.

Instalments of Purchase-price are not Annuities.

If there is a debt owing and it is agreed that it shall be paid by annual instalments, those instalments are not "annuities or other annual payments." Nor do they become such because the debt and the obligation to pay the instalments are created by the same instrument (*s*). Thus, upon a sale of minerals for a definite fixed sum which is to be paid by instalments spread over a term of years, the purchasers cannot deduct tax on the instalments, because these are in the nature of capital and not of interest (*t*). It was then thought that even if these instalments included payments of interest as well as of principal no part of them could be taxed; but it has now been decided, in the case of a railway undertaking purchased by the Government of India for what was called an annuity, payable half yearly for a term of forty-nine years, each payment including both an instalment of the purchase-price and interest on the portion of the purchase-price remaining unpaid, that the payments were severable, and the payer could not deduct the tax on that portion

(*p*) Annuities, pensions and stipends payable by the Crown are charged under Sched. E; see Chap. XI.

(*q*) Sched. D, Misc. Rules, r. 7, *infra*, p. 446.

(*r*) *Infra*, p. 430; *vide supra*, p. 103.

(*s*) *Chadwick* v. *Pearl Life, &c.*, [1905] 2 K. B. 507, per WALTON, J., at p. 514, stating the effect of the two cases next cited.

(*t*) *Foley* v. *Fletcher*, *supra*, p. 186; in *Taylor* v. *Evans* (1856), 25 L. J. Ex. 269, it had already been held that such instalments were not "rent," and that there was no right to deduct tax against them.

which represented an instalment of the purchase-price (*u*). In the last-mentioned case the Government of India were enabled by a previous contract to purchase the railway, and the arrangement for payment by instalments was made when the option to purchase had been exercised; but the same principle applies where the method of payment is itself a term of the bargain; an Act of Parliament stating the method by which the instalments have been calculated is not necessarily conclusive as to how much of them represents capital and how much interest (*x*). In the realization of securities on which the principal and interest of debentures are secured, income tax is payable on the part of the proceeds which represents interest; but the debenture holders need not therefore make an election so as to increase this portion and with it the amount of income tax payable (*y*).

It cannot, on the other hand, be said generally that wherever a contract of purchase stipulates for annual payments, those payments are not of the nature of annuities. Where the agreement between the parties involves no obligation to pay a definite sum, the annual payments are taxable, and the payer is entitled to deduct the tax (*z*). This principle was well exemplified where a leasehold interest was assigned (in addition to a premium) for a series of yearly sums payable quarterly throughout the unexpired term, each of which sums was exactly equal to an annual profit rental previously enjoyed by the assignors; the assignees were entitled to deduct tax on these sums (*a*), and an agreement to make an annual payment for a term of years of a percentage of gross receipts in consideration of the sale of a secret process (when no lump

(*u*) *Secretary of State for India* v. *Scoble*, [1903] 1 K. B. 494; [1903] A. C. 299. The Crown relied on Sched. C, because the so-called annuity was payable out of public revenues, as well as on Sched. D.

(*x*) *East Indian Rail. Co.* v. *Sec. of State for India*, [1905] 2 K. B. 413.

(*y*) *Smith* v. *Law Guarantee, &c.*, [1904] 2 Ch. 569; *In re Calgary and Medicine Hut Land Co., Ltd.*, [1908] 2 Ch. 652.

(*z*) *Chadwick* v. *Pearl Life, &c.*, [1905] 2 K. B. 507, *supra*, p. 188; *Delage* v. *Nugget Polish Co., Ltd.* (1905), 21 T. L. R. 454, *supra*, p. 154.

(*a*) *Chadwick* v. *Pearl Life, &c.*, *supra*.

sum had been fixed as the price) entitled the payers to deduct tax on the payments, although the recipients were foreigners not resident in this country (*b*).

Royalties on Patents paid out of Taxed Profits.

Where a royalty or other sum in respect of the user of a patent is paid wholly out of taxed profits, the payer is entitled to deduct and retain the tax thereon (*c*). If an interest in inventions and patents is sold (in addition to certain fixed payments) for a percentage payable annually for a term of years on the proceeds of sales of machines made in pursuance of the agreement, the payer is entitled to deduct income tax on the percentage payments (*d*).

Payments not made wholly out of Taxable Profits: Deduction of Tax.

Where any interest, annuity, or other annual payment charged under Schedule D (*e*) or any royalty (*f*) or other annual sum paid for the user of a patent, is not *payable*, or not wholly *payable* out of profits or gains brought into charge, that is, out of taxable profits, the payer is bound to deduct income tax against such payment and to account to the Crown for tax on that part which is not *actually paid* out of taxable profits (*g*). Any agreement to the

(*b*) *Delage* v. *Nugget Polish Co., Ltd.*, *supra*, p. 188. Cf. *Jones* v. *I. R.*, *infra*, p. 284.

(*c*) General Rules, r. 19 (2), *infra*, p. 455. As to royalties not so paid, see rule 21, *infra*, p. 455. The effect of payment of royalties on the computation of the payer's profits is discussed *supra*, p. 150.

(*d*) *Jones* v. *I. R.*, [1920] 1 K. B. 711; the question did not actually arise as to deduction of tax, but the percentage payments were held to be part of the payee's taxable income for purposes of super-tax, *vide infra*, p. 284; the fixed payments were admitted not to be so, although payable in instalments, see *Foley* v. *Fletcher*, *supra*, p. 187.

(*e*) *Vide supra*, pp. 180, 184; this rule does not apply to voluntary payments, although its language is different from rule 19. Cf. *Dalrymple* v. *Dalrymple*, *supra*, p. 186.

(*f*) *Vide supra*, pp. 178, 184.

(*g*) General Rules, r. 21 (1) (2), *infra*, p. 456; this rule corresponds with Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 24 (3), but the words "to such tax" which created a difficulty in *London County Council* v. *A.-G.*, [1901] A. C. 26, *supra*, p. 3, do not now appear in the rule. The object

contrary is void (*h*). When, on the other hand, as has been seen, payments are made out of taxable profits, the payer retains the tax so deducted (*i*). Note also that here the rule applies to all interest, and is not confined to yearly interest (*i*). A municipal corporation is bound therefore to deduct tax on interest for short loans contracted by it, if the interest is not paid out of taxable profits (*k*). Apart from interest, the annuities and other annual payments referred to are the same in both provisions (*l*). The payer has a right to deduct as against the payee, whether or no the Crown make any claim for an account (*m*).

The words "not payable, or not wholly payable" out of taxable profits, signify that the payments cannot lawfully be so paid; it is immaterial whether they are charged upon the taxable fund or not (*n*). And in order to come within the scope of the rule, the payments must not be lawfully payable out of profits taxable under any schedule; if they are payable out of profits received from land and charged under Schedule A, they will still be outside its scope (*o*).

Even if a direct assessment has been made in respect of interest paid as above described, the amount of tax deducted under this rule is nevertheless a debt due to the Crown (*p*); and a person who is entitled by the rule to deduct tax but fails to do so, is bound to pay to the Crown what he should have deducted; his neglect does not discharge the debt (*q*). The tax may, however, be deducted against payments made in arrear (*r*).

of sect. 24 (3) was not to impose a double income tax, but to cure a defect in earlier enactments: *L. C. C.* v. *A.-G.; vide supra*, p. 181, note (*n*).

(*h*) Rule 23 (2), *infra*, p. 456.

(*i*) Rule 19 (1), *supra*, p. 181.

(*k*) *L.-A.* v. *Edinburgh Corpn.* (1903), 6 F. 1, *supra*, p. 182.

(*l*) *Vide supra*, p. 185.

(*m*) *Dalrymple* v. *Dalrymple* (1902), 4 F. 545, *supra*, p. 186.

(*n*) *Sugden* v. *Leeds Corpn.*, [1914] A. C. 483.

(*o*) *London County Council* v. *A.-G.*, [1901] A. C. 26; see note (*g*) on p. 183.

(*p*) *L.-A.* v. *Forth Bridge Rail. Co.* (1890), 28 S. L. R. 576; *supra*, p. 180. The Crown will not enforce the claim except for any balance remaining due after the payment of the tax directly assessed.

(*q*) *L.-A.* v. *Edinburgh Corpn.* (1905), 7 F. 972.

(*r*) Cf. *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, *supra*, p. 182.

An assurance company which carries on the business of granting annuities is, however, prevented by a special provision (*s*) from treating as having been paid out of profits brought into charge any amount of annuities paid by which the taxed income of its "annuity fund" (*t*) is exceeded. Such a company is therefore bound to account to the Crown for the tax upon any such excess; whereas before the enactment of this provision it had been held entitled to retain for its own use the tax deducted upon annuities which were legally payable out of the whole of its assets, without allocating the annuities to any particular portion of its total income (*u*).

In order to recover the amount of any tax deducted under this rule, the Commissioners of Inland Revenue may take out a summons in the High Court, or in Scotland in the Court of Exchequer, commanding the person liable to deliver an account of the tax deducted on so much of the interest &c., as has not been paid out of profits brought into charge, and to pay the money to them, or to show cause to the contrary (*x*).

Payments out of Funds of Local Authorities and Insurance Offices and Investment Companies.

Important decisions with regard to deducting and accounting for tax on payments not wholly made out of taxable profits have been given in connection with the funds of local authorities and of insurance offices. The assets of such bodies often comprise funds differing in their nature and impressed with different liabilities. In

(*s*) General Rules, r. 21 (3), *infra*, p. 456; this provision takes the place of sect. 13 of the Finance Act, 1915 (5 & 6 Geo. 5, c. 62), which was passed in order to get rid of the decision of the House of Lords in *Edinburgh Life, &c.* v. *L.-A.*, *infra*, p. 195.

(*t*) Defined in sect. 237, *infra*, p. 406. The periodical return referred to in the definition as stating the liability of the company under its annuity contracts is that referred to under heading No. 7 in the Fourth Schedule (A) to the Assurance Companies Act, 1909 (9 Edw. 7, c. 49); see also sect. 5.

(*u*) *Edinburgh Life, &c.* v. *L.-A.*, *infra*, p. 195.

(*x*) Rule 21 (2), *infra*, p. 456; Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 2.

these cases the question has been, not whether the paying authority or company had a right to deduct tax against the payee, but whether, having done so, it was entitled to retain the amount deducted for its own benefit, because the payment was made out of taxable profits (*y*), or whether it was bound to account for that amount to the Crown, because the amount was "not payable or not wholly payable" out of taxable profits (*z*).

The right of the debtor to retain for his own benefit the amount of tax deducted against his creditors "depends upon whether he can answer in the affirmative each of the two following questions:—

"(1) Have the interest and the annuities been, in fact, paid, or must they, in the circumstances of the case, be taken to have been, in fact, paid out of 'profits or gains brought into charge,' *i.e.*, out of the so-called 'taxed fund?' (2) Was it lawful to pay them out of that fund? If either of these questions be answered in the negative, he must account to the revenue for the tax he has deducted. This is, I think, the only workable rule which can in practice be applied. It inflicts no injustice upon the subject. To allow him to retain the tax where he has not, in fact, paid it in the first instance himself would be, in effect, to allow him to levy a tax upon his creditors for his own benefit, not for that of the Crown. And if he has applied the moneys of a 'taxed fund' to discharge debts liable to income tax, in a way the law forbade him to do, he is the author of his own wrong and deservedly suffers" (*a*).

When Lord Atkinson says "must they, in the circumstances of the case, be taken to have been, in fact, paid out of . . . the so-called 'taxed fund,'" he refers to the subsidiary but important question as to whether apportionment is allowable between two funds of the debtor,

(*y*) See rule 19 (1), *supra*, p. 181.

(*z*) Rule 21 (1) (2); as to the meaning of the words quoted, *vide supra*, p. 190.

(*a*) *Sugden* v. *Leeds Corpn.*, [1914] A. C., *supra*, p. 190; per Lord ATKINSON at p. 506.

one of which is taxable, and the other is not. The question is thus answered in an earlier part of his speech :—

"What it (*b*) is an authority for is, I think, this: (1) that there is not to be any apportionment of rateability in favour of the Crown between two funds out of either of which the interest or annuities charged with the tax may lawfully be paid; and (2) that in case a mixed fund be formed from two funds, out of either of which the interest and dividends charged with the tax may lawfully be paid, you are to assume, in the absence of evidence to the contrary, that they have been paid from that portion of the mixed fund out of which they should be paid in the due course of administration, which due course is this, 'that annual charges should, in the first place, be paid out of annual income (*c*).'"

The cases in which these principles have been applied, though few, are of wide interest. In three of them the London County Council were concerned. In what may be called the preliminary case, the Council were held liable to pay income tax in respect of interest received on loans advanced by them to other authorities (*d*). The next case arose in respect of the dividends paid by the Council upon their consolidated stock and the interest paid by them upon other moneys borrowed by themselves. The interest received by them from other authorities was credited to their Consolidated Loans Fund. They paid the interest payable by them partly out of this fund, partly out of rents and profits on lands charged with income tax under Schedule A (*e*), and partly out of rates. In paying the interest due, the Council deducted tax; they accounted for the amounts deducted so far as the interest was paid out of rates (because these were not taxable profits), but declined to account for the amounts deducted against interest paid out of interest received or paid out of the

(*b*) The speech of Lord DAVEY in *London County Council* v. *A.-G.*, [1901] A. C. 26, *infra*, p. 193.

(*c*) Per Lord ATKINSON in *Sugden* v. *Leeds Corpn.*, [1914] A. C. at p. 504.

(*d*) *L. C. C.* v. *Grove* (1896), 3 Tax C. 508, *supra*, p. 180.

(*e*) *Vide supra*, p. 61.

rents and profits referred to. They were held to be justified in their refusal (*f*).

In the third of these cases, the London County Council sought to retain out of the amount deducted from that portion of the dividends which was paid out of the rates the income tax paid under Schedule A (*g*) upon the annual value of lands (including their own offices and so forth) (*h*), which they themselves occupied, and from which they derived no rents or pecuniary profits that could be devoted to the payment of dividends. These lands were, however, charged with the payment of the dividends, which far exceeded their annual value, and were mortgaged to their full value. The Council contended that the annual value of the lands should be treated as annual income which they had applied to satisfy these charges. The Council's claim was refused on the ground that although charged with the dividends, the lands in question did not, in fact, contribute anything to its payments, and the dividends could not be taken as constructively paid out of "a mere enjoyment" (*i*).

In the case of a life assurance company which granted annuities as a part of its business (*k*), there was no particular fund earmarked for their payment; but they were paid in part out of interest, dividends and rents received by the company after income tax had been deducted against them, and in part out of premiums, considerations paid for annuities and profits on the realization of investments. The interest, dividends and rents, on which tax had been deducted, were the only part of the company's income on which they were charged with tax; for if these had all been absent, the company's business would have resulted in a loss. This part of their resources provided

(*f*) *L. C. C.* v. *A.-G.*, [1901] A. C. 26, *vide supra*, pp. 3, 61.

(*g*) *Vide supra*, p. 61, where the effect of the decision upon Sched. A is discussed.

(*h*) See *Aberdeen Commissioners of Supply* v. *Russell* (1890), 17 R. 942, *supra*, p. 180.

(*i*) *A.-G.* v. *London County Council*, [1907] A. C. 131; as explained by Lord Atkinson in *Sugden* v. *Leeds Corpn.*, [1914] A. C. at p. 506.

(*k*) Cf. *Gresham Life, &c.* v. *Styles*, [1892] A. C. 309, *supra*, p. 141.

a fund amply sufficient to pay the annuities in full, had the company elected to pay them out of that fund. The whole of the assets of the company, however, formed the fund upon which the annuities were charged. The company claimed to retain the tax upon the whole of the annuities; but the Crown contended that the company must apportion the annuities over the whole of the assets out of which they might have been paid, and must account for such amount as was proportionate to the untaxed part of those assets. The Scottish Courts decided in favour of the Crown, but the House of Lords held that the company's claim was well founded, that no such apportionment could be made, and that the annuities must be assumed to be paid out of the taxed fund (*l*). Where the annuities are payable out of taxable profits, it is not necessary "to use, in paying the annuities, the actual moneys received in respect of the profits or gains in order to obtain the benefit of the deduction and retention" (*m*). So far as it relates to life assurance companies carrying on the business of granting annuities, the decision of the House of Lords is no longer applicable (*n*), but the general principles upon which it was decided are not affected.

A city corporation, on the other hand, had to pay interest on various loans; some of these were raised for trading undertakings (such as waterworks, gasworks and tramways), which were lucrative, and yielded a profit exceeding the interest on these loans by 78,519*l.*; other loans were raised for sanitary undertakings (including electric lighting), which were not lucrative, and the interest on these loans exceeded the profit derived from these undertakings by a sum of 93,929*l.*; there was also a deficit when the aggregate profit in respect of all the undertakings was set against the aggregate interest payable. The deficit on the sanitary undertakings was met out of the borough fund, which included rates as well as the 78,519*l.*

(*l*) *Edinburgh Life, &c.* v. *L.-A.*, [1910] A. C. 143.
(*m*) *Ibid.*, per Lord GORELL at p. 163.
(*n*) Rule 21 (3) of the General Rules; *vide supra*, p. 191.

yielded by the lucrative undertakings; the corporation was held, upon the construction of the local Acts, to have had no power to meet the deficit in this way.

The Crown claimed that the corporation were bound to account for the tax deducted on payment of 78,519*l.* (*o*); and succeeded in their claim, because that sum was not legally payable out of the borough fund, although it had in fact been so paid (*p*); and not for the reason that the interest must be taken not to have been paid wholly or partly out of a taxed fund; such a contention had been held inadmissible in the case last cited (*q*).

In a subsequent case (*r*), sect. 24 (3) of the Act of 1888 (*s*), and the decisions just dealt with, were much discussed; but the case did not arise under that provision, and LUSH, J., did not hold that the decisions affected the matter. The question was whether, where a part of the business of the company was the granting of annuities, and a part of its profits consisted of dividends taxed at the source, the Crown was bound, in ascertaining what amount of the company's total profits was still untaxed, and therefore liable to assessment, to allow a deduction of the whole of the dividends from those profits without making any further adjustment, or whether it was entitled to write back the amount paid in respect of annuities. That amount had been paid to the annuitants, less tax, and the company contended that they were entitled to retain the tax deducted against the annuitants; but they had clearly no right to do so unless the annuities were wholly payable out of profits brought into charge (*t*). The Crown were held to be so entitled, apparently on the ground that to have deducted the whole of the

(*o*) *I.e.*, of that part of the 93,929*l.* paid out of the profits of the lucrative undertakings; the corporation admitted liability in respect of the part paid out of rates.

(*p*) *Sugden* v. *Leeds Corpn.*, [1914] A. C. 483.

(*q*) *Edinburgh Life, &c.* v. *L.-A.*, *supra*, p. 195.

(*r*) *Hancock* v. *General Reversionary and Investment Co., Ltd.*, [1919] 1 K. B. 25; a wholly different point was also decided in this case, *supra*, p. 146.

(*s*) Corresponding with General Rules, r. 21 (1), (2), *vide supra*, p. 189.

(*t*) *Vide supra*, p. 189.

dividends without writing back the amount of the annuities paid, would have been to exclude from taxation that part of the company's profits out of which they were paid (*u*). But it may be doubted whether the decision conforms to the principles laid down by the House of Lords in *Gresham Life, &c.* v. *Styles* (*x*), and in *Edinburgh Life, &c.* v. *L.-A.*

Failure to Deduct Tax or refusal to allow Deduction.

If a person who is entitled to deduct tax against another in making any payment, refrains from doing so, he cannot afterwards seek to recover against the Crown the amount of income tax which he has thus failed to deduct (*y*). Where he is bound to account to the Crown for the tax deducted, his failure to deduct tax does not excuse his debt to the Crown (*z*). But there has been some difference of practice where the payer has claimed to recover from the payee amounts of income tax which the payer had failed to deduct against him. Both English and Scottish Courts have refused such claims where the payments in full were made under a mistake in law, and where it was

(*u*) The case is difficult to understand, because both in the arguments and in the judgment as reported the contention of the Crown appears to have been treated as a claim to allocate the payment of the annuities to the dividends which had already borne the tax. The annuities were in fact a charge on the whole of the company's assets, and such a claim would have been in direct conflict with the decision of the House of Lords in *Edinburgh Life, &c.* v. *L.-A.*, *supra*, p. 195. Sect. 24 (3) of the Act of 1888 was treated as if "profits . . . . brought into charge" meant "profits already taxed"; and the company's profits other than dividends were described as "untaxed profits," because the case arose on an appeal against assessments, and thus the amount of the profits to be assessed was still undetermined. But it is submitted that the expression "brought into charge," must mean "liable to be brought into charge," and that the application of that provision cannot depend on the actual moment when the assessment happens to be made. There was no doubt in the *General Reversionary case* that the whole of the company's profits were liable to the tax; the sole question was the amount of those profits. The case is dealt with *supra*, p. 143, in relation to the computation of profits.

(*x*) *Supra*, p. 141.

(*y*) *de Peyer* v. *The King* (1909), 100 L. T. 256; the provision for repayment of tax in a limited class of cases made in sect. 36 (1) of the Act of 1918 has been considered *supra*, p. 183.

(*z*) *Vide supra*, p. 190.

sought to recover the tax deducted over a series of years (*a*). On the other hand, in England, a debtor who had made an assignment for the benefit of creditors has been allowed credit in the final account for income tax on the whole of the previous payments of interest made to his creditors (*b*); and the Scottish Court allowed such a claim where it was sought to recover tax on a single payment only, in this case of mining royalties (*c*). The tax may be deducted on payment of arrears (*d*).

A special provision deals with cases in which the tax has been deducted at too low a rate previously to the passing of the Act imposing the income tax for the year, and enables the payer to make the deduction subsequently, and to recover any deficiency caused either by the failure to make the deduction or by the fact that the tax is imposed for that year at a higher rate than was in force when the deduction was made. The language of this sub-section is wide; but it appears to be aimed only at the difficulty created by the fact that the Act imposing the tax is not now usually passed at the beginning of the year, and not to authorize any deduction of tax except in respect of the particular year for which the interest or other payment is due (*e*).

In similar circumstances, the payee is also liable to a direct assessment for the amount of tax which has not been deducted against him (*f*).

There is a penalty of 50*l.* for refusing to allow a deduction of tax authorised by the Income Tax Act, 1918 (*g*).

(*a*) *Currie* v. *Gould* (1817), 2 Maddock, 163; *Ex parte Turner* (1864), 11 L. T. 352; *Ex parte Wythes* (1885), 53 L. T. 492, *supra*, p. 182; *Galashiels Building Soc.* v. *Newlands* (1893), 20 R. 821; *Warren* v. *Warren* (1895), 43 W. R. 490, *supra*, p. 185; *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100; *Oswald* v. *Kirkcaldy Magistrates*, [1919] S. C. 147; *In re Hatch*, [1919] 1 Ch. 351, *supra*, p. 185. (*b*) *Crane* v. *Kilpin* (1868), L. R. 6 Eq. 334.

(*c*) *Agnew* v. *Ferguson* (1903), 5 F. 879; the analogous provisions as to deduction against payments in the nature of rent are discussed *supra*, p. 59.

(*d*) *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, *supra*, p. 182.

(*e*) Sect. 211 (2). Cf. *Hill* v. *Kirshenstein*, [1920] 3 K. B. 556, *supra*, p. 56; but that case was decided with regard to rent, and as to interest, &c. there is no provision corresponding with Sched. A, No. VIII. r. 1, *infra*, p. 421.

(*f*) Sect. 211 (1), *infra*, p. 400; see under Sched. D, Case VI., *infra*, p. 224.

(*g*) General Rules, r. 23 (1), *infra*, p. 456.

Agreements against Deduction Void.

Every agreement for payment of interest or other annual payment (including annuities and royalties) without allowing the deductions of tax discussed in this chapter is void (*h*).

This rule makes no mention of wills; under a will the parties "take their respective rights from the bounty or the forbearance of the testator" (*i*). Where, therefore, a will contains a direction for payment free of income tax, there is nothing illegal in such a direction, and nothing to prevent its being carried out (*k*). The question whether the terms of the will amount to such a direction or not is purely one of the construction of wills (*l*).

A marriage settlement is, however, an agreement within the prohibition; and the recipient of a rent-charge, annuity or other annual payment under a covenant contained therein is bound to allow a deduction of income tax, in spite of any stipulation to the contrary, in whatever form of words it is expressed (*m*).

The rule also applies to an agreement of separation (*n*) even though it is made to carry out an order of the Court; the order itself for the annual payment of an annual sum

(*h*) General Rules, r. 23 (2), *infra*, p. 456, which takes the place of part of sect. 103 of the Income Tax Act, 1842. The rule also applies to rent, and to deductions of tax charged under Sched. A, *vide supra*, pp. 55 *sqq*.

(*i*) *Festing* v. *Taylor* (1862), 32 L. J. Q. B. 41, per ERLE, C.J., at p. 44; *supra*, p. 59.

(*k*) *Lovat* (*Lord*) v. *Duchess of Leeds* (1862), 31 L. J. Ch. 503, *supra*, p. 59; *Festing* v. *Taylor*, *supra*; *In re Saillard*, [1917] 2 Ch. 401, per SWINFEN EADY, L.J., at p. 402.

(*l*) It is not thought necessary therefore to deal with it in a work on income tax; but many of the earlier cases will be found cited or discussed in *In re Saillard*, *supra*, and *In re Loveless*, [1918] 2 Ch. 1.

(*m*) *A.-G.* v. *Shield* (1858), 28 L. J. Ex. 49; *Floyer* v. *Bankes* (1863), 32 L. J. Ch. 610; *Blair* v. *Allen* (1858), 21 M. 15; but possibly if an arrangement comparable to that in *Brooke* v. *Price*, *infra*, were contained in a marriage settlement (which is not inconceivable), no deduction of tax would be admissible.

(*n*) *Shrewsbury* v. *Shrewsbury* (1906), 22 T. L. R. 598; see also *Shrewsbury* v. *Shrewsbury* (1906), 23 T. L. R. 100, *supra*, p. 198; *Blount* v. *Blount*, [1916] 1 K. B. 230, *supra*, p. 185; the cases which decide that annuities, &c. paid in accordance with such agreements are within the scope of the tax are cited *supra*, p. 185.

free of income tax may be perfectly valid (*o*). But where the agreement provides for a division between the parties of the net balance of certain profits which remain after income tax on the whole has been deducted, a covenant to pay a proportion so arrived at without deduction of tax is not void; and if there is a further covenant that if the proportionate sum shall fall below a fixed amount, then that fixed amount shall be paid without deduction, such a covenant is also valid; for that fixed amount is "part of a larger sum which has already discharged all its liability to income tax" (*p*).

It should be borne in mind that the rule in question applies only to contracts between the payer and payee; the rule has no bearing where the payer is no party to the agreement (*q*).

The rule renders void only that portion of the agreement which purports to prevent a deduction of tax, and not the whole agreement (*r*).

Discounts.

The tax charged under Case III. of Schedule D extends to "all discounts" (*s*), that is to say, to all discounts which are either "profits" or "income" (*t*); in other words, the tax extends to all "profits arising from discounts received on discounting transactions" (*u*), or to all "profits on securities bought at a discount, and on transactions involving a discount."

Treasury Bills are documents by which the Government

(*o*) *Blount* v. *Blount*, *supra*, p. 185; as to the validity of such an order see *Frankfort* v. *Frankfort*, *supra*, p. 185, and cf. *In re Shaw*, *supra*, p. 185.

(*p*) *Brooke* v. *Price*, [1917] A. C. 115; see per Lord WRENBURY at p. 125.

(*q*) *Ibid.*, per Lord WRENBURY at p. 126.

(*r*) The cases above cited were all decided upon that footing.

(*s*) Rule 1 (b), *infra*, p. 441.

(*t*) For the rules in Case III. are subject to the words prescribing the scope of Case III. which appear in rule 2 of Sched. D, *vide supra*, p. 176. The effect, therefore, of the present form of enactment does not differ materially from that of rule 2 of the third case of Sched. D in the Act of 1842, which speaks of "the profits . . . . on all discounts."

(*u*) *National Provident Institution* v. *Brown*, [1920] 3 K. B. 35, *supra*, p. 5; see per Lord STERNDALE, M.R., at p. 50, and per SCRUTTON, L.J., at p. 58.

undertakes to pay, on the expiration of a term, a certain sum of money in consideration of a smaller sum paid to the Government at the time of issue; they are, therefore, "issued at a discount," and any profit realised by reason of this fact is taxable under Case III. (*u*). But "profit" bears the same meaning here as elsewhere in the Income Tax Acts, and does not include any accretion of capital (*x*); where the bill is held to maturity by the original purchaser, the whole difference between the price at which the bill is issued by the Government and the amount paid by the Government at maturity is a profit made by buying a security at a discount, and is taxable. But where a bill has been sold before maturity, or has been converted into War Loan, the price realized (either in cash or in the amount of War Loan stock received) depends upon the state of the money market at the time of sale and upon the rise or fall in the value of money in the interval between purchase and sale; and any increase between the price paid for the bill and the price received on sale that is due to those causes is not taxable because it represents the appreciation of a capital sum (*y*). In such a case, therefore, it is necessary to analyse that increase; the only portion of the increase which can be taxed under Case III. is the amount by which the bill has increased in value before sale by reason of its advance towards maturity, and of the consequent accrual of interest upon it. The same principle applies to a bill purchased in the market, and not from the Government, whether it is held to maturity or not; for in both cases the price paid, and also, in the case where the bill is not held to maturity, the price received, depends upon the state of the market at the time of purchase or sale (*z*).

War Expenditure Certificates are on the same footing as Treasury Bills for this purpose (*z*).

(*u*) See note (*u*) previous page.

(*x*) *Vide supra*, pp. 138—140.

(*y*) *National Provident Institution* v. *Brown, supra;* see per Lord STERNDALE, M.R., at pp. 50, 51, and per SCRUTTON, L.J., at pp. 59, 60.

(*z*) *National Provident Institution* v. *Brown, supra.*

The taxable profits are taxable only as profits of the year in which they are in fact received; though the interest may have been accruing during two or more financial years, it is not to be attributed in portions to each of those years (*z*). No assessment can be made to income tax in any year in which there are no transactions of the kind (*a*).

Under Case III. each transaction involving a discount is treated as a separate source of taxable income; and there is no set-off for losses incurred.

Where a person carries on a trade of discounting, he is assessable under Case I.; where this is the case there will be no such adjustment in respect of capital accretions as is made under Case III.; Treasury Bills, for instance, may be matters in which he is dealing, and in his hands no part of their value represents capital (*b*). He will, however, be entitled to debit himself with losses (*c*).

Profits of Securities bearing Interest payable out of the Public Revenue.

Such profits of this kind as are not charged under Schedule C are to be charged under Case III. (*d*); Schedule C charges the interest itself together with dividends and annuities (*e*). The profits left to be charged under Case III. of Schedule D appear therefore to be profits of a similar kind to those considered under "discounts"; and as in that case, receipts must be analyzed so that no capital accretion is included in the taxable profits (*f*). A gain due to a change of investments is not taxable income, except where the buying and selling of investments is carried on as a trade (*g*).

(*z*) *National Provident Institution* v. *Brown*, *supra*.
(*a*) *Vide supra*, p. 5.
(*b*) Cf. *Californian Copper Syndicate* v. *Harris*, and other cases cited therewith, *supra*, p. 139.
(*c*) See per Lord STERNDALE, M.R., [1920] 3 K. B. at p. 51.
(*d*) Sched. D, Case III. r. 1 (c), *infra*, p. 441.
(*e*) See Chap. V.
(*f*) Cf. *National Provident Institution* v. *Brown*, *supra*.
(*g*) *Vide supra*, pp. 138—140.

Small payments of Interest out of Public Revenues.

Interest, annuities, dividends and shares of annuities payable out of public revenues are in general taxed at the source under Schedule C (*h*), but where the half-yearly payment in respect of any of these is 50*s.* or less the assessment is made under Case III. of Schedule D (*i*) directly upon the recipient, unless he is exempt from income tax (*k*).

Savings Bank Deposits.

Savings banks are exempt from tax under Schedule D in respect of any income applied to the payment or credit of interest to the depositor (*l*); but the depositor is charged under Case III. with the tax on such interest, unless the savings bank has deducted tax in paying or crediting him with the interest (*m*).

Interest on War Loan, Exchequer Bonds, &c.

The interest on certain Exchequer Bonds issued during the war or within six months thereafter paid without deduction of tax, the interest on War Loan Stock so paid and the interest on War Loan Stock inscribed in the Post Office Register (where the stock does not exceed 200*l.* in nominal amount) are all taxable under Case III. of Schedule D (*o*). As a result of such interest being taxed in this manner, the tax is levied on the interest received in the previous financial year, and not upon that received during the year of

(*h*) *Supra*, p. 100.

(*i*) Sched. C, first set of rules, r. 9, *infra*, p. 430; second set, r. 3, *infra*, p. 430; third set, r. 2, *infra*, p. 432; Sched. D, Case III. r. 1 (d), *infra*, p. 441.

(*k*) As to exemption, *vide infra*, p. 268.

(*l*) Sect. 39 (3) (b), *infra*, p. 353; see proviso (ii) as to cases where the interest paid to any depositor in the year exceeds 5*l.*

(*m*) Sched. D, Case III. r. 1 (e), *infra*, p. 441.

(*o*) Sect. 49, *infra*, p. 358; and Sched. D, Case III. r. 1 (f), *infra*, p. 441. As to British municipal loans raised in the U. S. A., see sect. 46 (4).

assessment, as would be the case if the tax were deducted at the source (*p*).

Foreign and Colonial Assurance Companies.

Many assurance companies (*q*) carry on business in the United Kingdom although, the "head and seat and directing power" (*r*) being situate abroad, they are not "residing" in the United Kingdom (*s*) within the meaning of the Income Tax Acts. In relation to such companies, the Crown might have difficulty in exercising its option to levy the tax upon interest on investments rather than upon actual profits of trading (*t*), were it not enabled to do so by a set of provisions contained in the rules of Case III. (*u*). Under these provisions, an assurance company not having its head office in the United Kingdom is liable to be assessed on a certain portion of the income from the investments of its life assurance fund (that is, the fund representing the amount of its liability with respect to its life assurance business, excluding annuity business) (*v*). This portion of income is in general calculated at the same proportion of the income as the amount of premiums received in the same year from policy holders resident in this country or from any other policy holders who have made their proposals through the company's office or agency in this country bears to the total premiums received in the year (*x*); a similar proportion of expenses of management is deducted (*y*). But where the head office of the company is in a British possession, the Commissioners of Inland Revenue may by regulation prescribe some other basis of apportionment (*z*). The income thus chargeable

(*p*) Case III. r. 2, *infra*, p. 441; see also *National Provincial Institution* v. *Brown*, *supra*, p. 201.
(*q*) Defined in sect. 237, *infra*, p. 406.
(*r*) *Vide supra*, p. 116.
(*s*) *Vide supra*, p. 112.
(*t*) *Vide supra*, p. 129.
(*u*) Sched. D, Case III. r. 3, *infra*, p. 441.
(*v*) Rule 3 (1).
(*x*) Rule 3 (2).
(*y*) Sect. 33 (4), *infra*, p. 351; *vide infra*, p. 205.
(*z*) Case III. r. 3 (2), proviso.

is the income of the preceding financial year, or of the account year which ended in that year (*a*); and the calculation of proportion is made accordingly (*b*).

This charge is, however, alternative only and not additional, and will be cancelled or reduced proportionably if the income of the life assurance business has already borne tax by deduction, or "otherwise," that is, if a charge has already been made under Case I. on the trading profits of that business (*c*); "life assurance business" includes the business of granting annuities (*d*). The making of such charges is in the hands of the Special Commissioners (*e*).

Expenses of Management of Life Assurance and other Companies.

As has been seen (*f*), companies carrying on certain classes of business are liable to be taxed (at the option of the Crown) upon the interest and dividends derived from their investments, instead of being taxed upon the profits of their trade under Case I. of Schedule D (*f*). Where there is no assessment of the kind last mentioned, provision is made for relief in respect of any sums disbursed as expenses of management (including commissions) (*g*). But for this provision, the companies to which it refers would be at a disadvantage as compared with other companies of the same class, who are assessed upon their profits, because expenses of management are deducted before the profits of trade can be ascertained (*h*); it is not, however, to give them any advantage over companies so assessed (*i*).

The relief is confined to assurance companies (*k*) carrying on life assurance business; to companies whose business

(*a*) Rule 2, *infra*, p. 441.
(*b*) Rule 3 (2).
(*c*) Rule 3 (4).
(*d*) See definition in sect. 237, *infra*, p. 407.
(*e*) Rule 3 (3), *vide infra*, p. 442.
(*f*) *Supra*, pp. 129, 130.
(*g*) Sect. 33, *infra*, p. 350.
(*h*) *Vide supra*, pp. 135, 136.
(*i*) Sect. 33 (1), proviso (a).
(*k*) Defined in sect. 237, *infra*, p. 407.

consists mainly in the making of investments, and the principal part of whose income is derived therefrom (*l*); and to "any savings bank or other bank for savings" (*m*).

The expenses of management on which repayment can be claimed are reduced in the case of an assurance company by the amount of any fines, fees, or profits arising from reversions; (against such profits may be set off any loss arising from reversions in any previous year from April 6th, 1915, onwards) (*n*); and also by the amount of the expenses attributable to management of any income of the foreign life assurance fund relieved from tax (*o*). Where the assurance company has not its head office in the United Kingdom, the relief given corresponds with expenses of management of that portion only of the income of its life assurance fund on which it pays tax (*p*).

In the case of any other company than an assurance company, or of any such bank, the expenses of management are reduced by the amount of any income or profits derived from sources not charged to tax (*q*).

Note that in all these cases it is the whole amount of the profits from reversions or the profits not charged to tax that has to be deducted; and not merely the proportion of the expenses which is attributable to the management of the source from which those profits are derived.

Any expenses (connected with repairs, maintenance, insurance, or management of land) for which relief can be claimed under Schedule A, No. V., Rules 7, 8 (*r*) must also be deducted in either case (*s*).

(*l*) Companies of this class are referred to *supra*, pp. 107, 129.

(*m*) Other exemptions for certain kinds of savings banks are created by sect. 39 (3) (a) (b), *vide supra*, p. 203.

(*n*) Sect. 33 (1), provisos (b), (c); the first enactment granting this relief is sect. 14 (1) of the Finance Act, 1915 (5 & 6 Geo. 5, c. 62), which applies to the tax for the year beginning on that date.

(*o*) Sect. 33 (5); this appears to refer to the relief in respect of certain war loan securities given by sect. 46 (2), (3), *vide supra*, p. 102.

(*p*) Sect. 33 (4); a provision for relief in respect of a portion of its income is contained in No. III. of Sched. D, *vide supra*, p. 204.

(*q*) Sect. 33 (1), proviso (b); instances of income or profits not charged will be found in sect. 39 (3) (a), (b), *vide supra*, p. 203.

(*r*) *Vide supra*, p. 43.

(*s*) Sect. 33 (3).

The claim must be made to the Special Commissioners. It must be made by notice in writing to the surveyor (which must state particulars) within twelve months after the expiration of the year of assessment to which it relates (*t*). The facts, including the fact that tax has been paid by deduction (*u*) or otherwise, and not assessed under Case I. of Schedule D, must be proved to the satisfaction of the Special Commissioners (*x*); if the surveyor objects to the claim, it is heard as if it were an appeal, and a case may be stated for the High Court (*y*).

(*t*) Sect. 33 (2); this contrasts with the more general limitation of three years contained in sect. 41, *infra*, p. 355.

(*u*) *Vide supra*, pp. 181 *sqq*.

(*x*) Sect. 33 (1).

(*y*) Sect. 33 (2); as to appeal and case stated, *vide infra*, p. 314.

CHAPTER IX.

INCOME FROM FOREIGN SECURITIES AND OTHER FOREIGN POSSESSIONS: SCHEDULE D, CASES IV. AND V.

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Scope of Cases IV. and V.

LIKE the other cases of Schedule D, Cases IV. and V. are subject to the opening rule of Schedule D. By this rule the tax is charged upon the annual profits accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and from any trade or profession whether carried on in the United Kingdom or elsewhere (*a*). It is also charged upon all interest of money, annuities and other annual payments not charged under Schedules A, B, C or E (*b*), without specifying the country from which such interest, &c. originates, or in which it is paid.

Under Cases IV. and V. the tax is charged upon the income arising from three classes of property out of the United Kingdom; first, securities (*c*); secondly, stocks, shares and rents (*d*); thirdly, any other possessions (*e*).

With regard to the income from, first, securities, and secondly, stocks, shares and rents, it depends on the status

(*a*) Sched. D, 1 (a), (i), (ii), *infra*, p. 432.

(*b*) Sched. D, 1 (b), *infra*, p. 432.

(*c*) Except interest, &c. payable out of public revenues, and charged under Sched. C; Sched. D, 2, Case IV., *infra*, p. 433; Case IV. rr. 1, 2, 3, *infra*, p. 442.

(*d*) Sched. D, 2, Case V., *infra*, p. 433; Case V. rr. 1, 3, *infra*, p. 443.

(*e*) Sched. D, 2, Case V.; Case V. r. 2.

or residence of the recipient (*f*) whether the whole of the income is charged with the tax, or only that portion which is brought to the United Kingdom; that is to say, it depends on the recipient being a British subject, or being domiciled (*g*), or "residing" (*h*), or being "ordinarily resident" (*g*), in this country.

The following classes of persons are liable in respect of the whole income, whether it is brought to this country or not (*i*):—

individuals who are British subjects and are both domiciled and ordinarily resident in the United Kingdom;

individuals who are subjects of foreign states but are domiciled in the United Kingdom, wherever they ordinarily reside, provided that they have a residence in this country (*j*);

companies and other bodies residing in this country (*k*), except assurance companies in respect of income arising from the investments of their foreign life assurance funds (*l*).

The following classes are liable in respect only of that portion of the income brought to this country (*m*):—

individuals who are British subjects but are not domi-

(*f*) *Vide infra*, p. 221.

(*g*) *Vide infra*, p. 211.

(*h*) For the meaning of this word as to companies, see Chap. VI.; as to individuals, see Chap. XII.

(*i*) Case IV. r. 1; Case V. r. 1, *infra*, pp. 442, 443; rule 2 of Case IV. and rule 3 of Case V. show the classes of persons to whom rule 1 of either case does *not* apply. Under the Act of 1842, Sched. D, fourth and fifth cases, the income from foreign securities and possessions was taxable only so far as it was received in the United Kingdom; the rules of these cases, which now provide for payment by certain classes of persons on the whole income, were introduced by sect. 5 of the Finance Act, 1914 (4 & 5 Geo. 5, c. 10); as to possessions other than stocks, shares, or rents, the decision in *Colquhoun* v. *Brooks*, *infra*, p. 215, was, however, left undisturbed.

(*j*) Sched. D, 1 (a), referred to at the head of this chapter.

(*k*) As to the meaning of residence in the case of companies, *vide supra*, p. 112.

(*l*) "Assurance company," and "foreign life assurance fund," are defined in sect. 237, *infra*, p. 406. As to war loan securities forming part of the investments of such a fund, see sect. 46 (2), (3), *supra*, p. 102. The option of the Crown to tax assurance companies on the income of investments instead of trade profits is described *supra*, p. 129.

(*m*) Case IV. r. 2; Case V. r. 3.

ciled in the United Kingdom, although they may have a residence here;

individuals who are British subjects domiciled in the United Kingdom, but are not ordinarily resident here;

individuals who are subjects of foreign states, and are not domiciled in the United Kingdom, although they may have a residence here (*n*);

assurance companies in respect of income arising from the investments of their foreign life assurance funds (*o*).

Persons who are not in any sense "residing" in the United Kingdom are not liable in respect of any of the income described in Cases IV. and V., whether it is brought to this country or not (*p*), and an individual who was the subject of a foreign state and was neither domiciled nor resident in this country has been held not to be liable in respect of income not brought to this country, although the income was derived from trust funds and the trustees were domiciled and resident in the United Kingdom; neither were the trustees chargeable (*q*).

The income of a person residing in this country from possessions out of the United Kingdom (other than securities or stocks, shares and rents) is charged only to the extent to which it is received in this country (*r*).

Provisions have now been enacted giving some relief from United Kingdom income tax in cases where income tax has already been paid or borne in any British possession or protectorate (*s*).

A person who is in the United Kingdom "for some temporary purpose only, and not with any view or intent of establishing his residence therein," and has not resided

(*n*) Cf. *I. R.* v. *Cadwalader* (1904), 7 F. 146; 5 Tax C. 101, *infra*, p. 210.

(*o*) See note (*l*), previous page.

(*p*) Such persons are not within the scope of Sched. D; see Sched. D, 1 (a), (i), (ii), *infra*, p. 432.

(*q*) *Williams* v. *Singer; Pool* v. *Royal Exchange, &c.*, [1921] A. C. 65.

(*r*) Case V. r. 2, *infra*, p. 443; as to what constitutes receipt in this country, *vide infra*, p. 217.

(*s*) Finance Act, 1920, s. 27, *infra*, p. 474; see Chap. I., p. 28.

in this country for six months in any year of assessment, is not liable, and is not charged in respect of securities, stocks, shares or rents out of the United Kingdom; but if he resides for six months or more in the year, he is chargeable in that year to the extent allowed by Cases IV. and V., whether his purpose is permanent or temporary (*t*).

"*Domiciled*": "*Ordinarily resident.*"

The amount of the liability in respect of income from securities and from stocks, shares and rents, may therefore depend on whether a person is "domiciled," or whether, being a British subject, he is "ordinarily resident" in the United Kingdom. The law of domicil in general applies for income tax purposes; and there is no decision in which its principles have been discussed at any length in their specific application to income tax law, though the subject is glanced at in some of the cases decided upon questions of residence (*u*).

"A man can have residences in more countries than one, although he can only have one domicile" (*x*). And the mere fact of a man possessing a residence in the United Kingdom may make him liable to income tax, although he may not have visited this country within the year of assessment (*y*). But such a fact taken by itself does not appear to be sufficient to make a British subject (though domiciled in the United Kingdom) liable to pay tax on the whole of his income from securities, stocks, shares and rents. A man may be "not ordinarily resident," though he possesses a residence to which he may resort if he desires (*z*); and if a merchant carrying on business in

(*t*) Sched. D, Misc. Rules, r. 2, *infra*, p. 444; see Chap. XII., p. 250.

(*u*) These cases are discussed *infra*, p. 247.

(*x*) Per Lord President ROBERTSON, in *I. R.* v. *Cadwalader* (1904), 7 F. 146; 5 Tax C. at p. 107.

(*y*) See *Rogers* v. *I. R.* (1879), 6 R. 1109, and the other cases cited therewith, *infra*, p. 250.

(*z*) The phrases "ordinary residence," "ordinarily resides," occur also in Sched. D, Misc. Rules, r. 4, *infra*, p. 445, and General Rules, r. 3, *infra*, p. 451; Sched. E, r. 18 (5), *infra*, p. 451. See *R.* v. *Aldrington Commrs.* (1916), 85 L. J. K. B. 1753, *infra*, p. 299, though in that case the facts were held not even

Italy, India, or Northern Nigeria (*a*) has a residence in this country to which he resorts for short periods at a time, even though those periods recur every year, he is probably not liable for any income derived from such sources beyond what is brought to this country.

Questions of domicile and residence arising under these rules (*b*) are decided by the Commissioners of Inland Revenue, who may be required to state a case on a point of law for the High Court (*c*).

Ownership of the Assets Immaterial.

In order to make him chargeable under Case V., it is not necessary that a person should own the corpus of the foreign possession. Income derived from assets in a place out of the United Kingdom may be a foreign possession, although it accrues to a person who does not own those assets. Therefore where the assets were vested in trustees under a will, who at their discretion made remittances out of the income for the education and maintenance of minors residing in this country, that income was held to be a foreign possession and to be properly charged under Case V.; as soon as the trustees had exercised their discretion (even if before that time the children's interest was only contingent), the income became the income of the children (*d*).

It appears to be true also of income arising from securities that ownership of the assets is not necessary to make a person liable under Case IV. And it follows that the question whether the whole income is taxed or only that part received in this country, depends on the status of the recipient of the income, not of the owner of the assets (*e*).

to constitute residence; see also *R.* v. *Kensington Commrs., Ex parte Polignac*, [1917] 1 K. B. 486, *infra*, p. 250.

(*a*) See *Lloyd* v. *Sulley* (1884), 11 R. 687; 2 Tax C. 37; *Turnbull* v. *Foster* (1904), 7 F. 1; 6 Tax C. 206; *Thomson* v. *I. R.*, [1919] S. C. 8; 7 Tax C. 137.

(*b*) Case IV. r. 2 (a); Case V. r. 3 (a).

(*c*) Case IV. r. 3; Case V. r. 4.

(*d*) *Drummond* v. *Collins*, [1915] A. C. 1011, *infra*, p. 221.

(*e*) Cf. *Williams* v. *Singer*, *infra*, p. 221.

Computation of Tax: One Year or Average of Three.

As to amount, again, there is a distinction between "securities" on the one hand and "stocks, shares and rents" and other possessions on the other hand.

The tax in respect of securities is computed upon the income received in this country or the total income (as the case may be) in the actual year of assessment (*f*); the tax in respect of stocks, shares and rents is computed upon the income received in this country, or the total income (as the case may be) on an average of the three preceding years (*g*); the tax in respect of other possessions is computed on the income received in this country on an average of the three preceding years (*h*).

Where a sum has been received in this country in the year of assessment or in the years of average, as the case may be, the fact that it may have been received and have accumulated abroad in previous years is immaterial (*i*).

If no income has been received in this country during the year of assessment from stocks, shares, rents or other possessions out of the United Kingdom, it does not appear that any tax can be charged, although there has been such a receipt in this country within the years of average (*k*).

Securities.

Shares in a trading company are not securities (*l*); the tax on income arising from them is therefore to be computed on an average of the three preceding years (*m*). It will depend on the circumstances indicated above (*n*) in

(*f*) Case IV. rr. 1, 2.

(*g*) Case V. rr. 1, 2, 3; the average is calculated as in Case I., *vide supra*, pp. 162—167.

(*h*) Case V. r. 2; see last note.

(*i*) *Scottish Provident, &c.* v. *Farmer, infra*, p. 220; as to what constitutes receipt in this country, *vide infra*, p. 217.

(*k*) Cf. *National Provident, &c.* v. *Brown, supra*, p. 200.

(*l*) *Bartholomay Brewing Co.* v. *Wyatt*, [1893] 2 Q. B. 499, *supra*, p. 120; *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, *supra*, p. 122, per FLETCHER MOULTON, L.J., at p. 104; *Singer* v. *Williams*, [1921] 1 A. C. 41.

(*m*) *Singer* v. *Williams, supra.*

(*n*) See p. 211.

what cases the whole income, and in what cases only the receipts in the United Kingdom, are to be brought in to the average.

The following passage indicates the meaning of the word "securities" in the Income Tax Acts:—

"The word denotes a debt or claim the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment; but I am not prepared to say that other forms of security (such as a personal guarantee) are excluded. In each case, however, where the word is used in its normal sense, some form of secured liability is postulated. No doubt the meaning of the word may be enlarged by an interpretation clause contained in a statute . . . or the context may show, as in certain cases relating to the construction of wills, that the word is used to denote, in addition to securities in the ordinary sense, other investments such as stocks and shares. But in the absence of any such aid to interpretation, I think it clear that the word 'securities' must be construed in the sense above defined, and accordingly does not include shares or stock in a company" (*n*).

A covenant, in an agreement under seal, to pay interest on unpaid purchase-money of land in a Dominion is a security, and the interest is chargeable under Case IV. (*o*).

Computation of Income.

Where in the case of securities, stocks, shares or rents the charge is upon the full amount of the income whether received in the United Kingdom or not, the persons liable to tax are entitled to receive deductions and allowances (*p*), as if the income had arisen wholly in this country (*r*). Moreover, a deduction is allowed of any sum paid as

(*n*) *Singer* v. *Williams*, *supra*, per Viscount CAVE, [1921] 1 A. C. at p. 49.

(*o*) *Hudson's Bay Co.* v. *Thew*, [1919] 2 K. B. 632.

(*p*) As to allowances and deductions in favour of individuals, *vide supra*, pp. 10 *sqq.*; in favour of assurance companies, *vide* pp. 205—7.

(*r*) Case IV. r. 1.

income tax in the place where the income has arisen, to the extent to which that payment has been made in respect of income not received in the United Kingdom; as to any part which is received in this country, there is no deduction for income tax, whether levied in a British possession or protectorate (*s*) or elsewhere; indeed, an addition must be made for any income tax paid or borne outside the United Kingdom (*t*).

Where any "annual interest," "annuity," "or other annual payment" (*u*) is payable to a person not resident in the United Kingdom out of that part of the income which is not brought to this country, the amount of such payment is excluded from charge; but if the payment, though made to a resident abroad, is made out of money brought to this country, or if it is made to a resident in this country, there is no deduction on this account from the assessment (*x*).

What has been said above as to income tax in respect of that part of the income received in this country where the whole is taxable, applies also where only what is received here is taxable.

Possessions other than Stocks, Shares or Rents.

Apart from stocks, shares and rents, the most important kind of "income arising from possessions out of the United Kingdom" which is charged under Case V., is the profits of a trade or of an interest in a trade, which is owned by an individual (*y*) or a company (*z*) residing in the United

(*s*) Finance Act, 1920, s. 27 (4); *supra*, p. 28.

(*t*) *Ibid.*; and cf. *Samuel* v. *I. R.*, *infra*, p. 283.

(*u*) As to the meaning of these expressions, *vide supra*, pp. 181, 184.

(*x*) The payer is in general entitled in making the payment to deduct income tax on the amount paid, *vide supra*, pp. 181, 185.

(*y*) *Colquhoun* v. *Brooks* (1889), 14 A. C. 493, *supra*, pp. 114—116. The effect of this decision is unaltered by the present form of Case V.

(*z*) *Bartholomay Brewing Co.* v. *Wyatt*; *Nobel Dynamite Trust Co.* v. *Wyatt*, [1893] 2 Q. B. 499, *supra*, p. 120; *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, *supra*, p. 121; *Mitchell* v. *Egyptian Hotels, Ltd.*, [1915] A. C. 103; as to the residence of companies in the United Kingdom, *vide supra*, p. 112.

Kingdom, but which is in no sense carried on in this country. The tax in such a case is charged, not on the total income, but on a three years' average of the actual sums annually received in this country (*a*). In estimating the income there is no deduction for Dominion income tax; on the contrary, an addition is made equivalent to the amount of income tax borne or paid in the Dominion (*b*).

"'Possessions' is a wide expression, it is not a word with any technical meaning; the Act supplies no interpretation of it. I cannot see why it may not fitly be interpreted as relating to all that is possessed in Her Majesty's dominions out of the United Kingdom or in foreign countries and which is a source of income. And if so I do not think any violence would be done to the language if it were held to include the interest which a person in this country possesses in a business carried on elsewhere" (*c*). "The word 'possessions' is not a technical word. It seems to me that it is the widest and most comprehensive term that could be used" (*d*).

Where the "head and seat and directing power" of a trade (whether owned by an individual or a company) are situate in this country, the whole of its profits are charged with income tax under Case I. of Schedule D, even though a part (possibly the greater part) of its trading operations are situate abroad (*e*). Such a trade is not a foreign possession (*f*).

But if an individual resident in the United Kingdom is a partner in a business carried on wholly in Australia, and takes no share in its management, he is liable to tax only in respect of that part of the profits which he receives in this country (*g*). The case of a company is more diffi-

(*a*) Case V. r. 2, *infra*, p. 443.

(*b*) Finance Act, 1920, s. 27 (4); as to relief in such cases, *vide supra*, p. 28.

(*c*) *Colquhoun* v. *Brooks*, 14 A. C., per Lord HERSCHELL at p. 508.

(*d*) Per Lord MACNAGHTEN, 14 A. C., at p. 516.

(*e*) *Cesena Sulphur Co.* v. *Nicholson* (1876), 1 Ex. D. 428; *Imperial Continental Gas Assn.* v. *Nicholson* (1877), 1 Tax C. 138; *San Paulo Brazilian Rail. Co.* v. *Carter*, [1896] A. C. 31; *Ogilvie* v. *Kitton*, [1908] S. C. 1003; 5 Tax C. 338; *supra*, pp. 114, 117, and the other cases cited therewith.

(*f*) *San Paulo (Brazilian) Rail. Co.* v. *Carter*, *supra*.

(*g*) *Colquhoun* v. *Brooks*, *supra*.

cult because its "residence" necessarily coincides with the situation of its "head and seat and directing power" (*h*); but where a company's trading operations are situate abroad, and it exercises no directing power over them, but confides that power to a local board of directors in the country where the trading operations are situate, that company is charged under Case V., and is liable only to pay tax on so much of the profits as is brought to this country (*i*). The same is true where the English company holds the bulk, or the whole, of the shares of the foreign company which carries on the operations abroad, provided that the English company does not direct those operations (*k*).

The question where the directing power is situate must for this purpose be decided upon the facts of the year of assessment only; the course of business in other years is immaterial (*l*).

There is no deduction for expenses of distribution of income by trustees (*m*).

Sums received in the United Kingdom.

As has been seen, certain classes of individuals, together with assurance companies in respect of income from investments of their foreign life assurance funds, are charged under Cases IV. and V. with tax only in respect of the sums received in the United Kingdom (*n*), whether in the year of assessment or upon an average of the three preceding years. And in respect of possessions other than securities, stocks, shares and rents, the tax (whoever the recipient of the income) is calculated upon a three years'

(*h*) See the remarks of PHILLIMORE, J., in *Kodak, Ltd.* v. *Clark*, [1902] 2 K. B. at p. 459, and *Bartholomay Brewing Co.* v. *Wyatt*.

(*i*) *Mitchell* v. *Egyptian Hotels, Ltd.*, *supra*. The distinction between Case I. and Case V. in this distinction appears clearly in the passage cited from Lord SUMNER'S speech, *supra*, p. 116; as to the facts, *vide supra*, p. 119.

(*k*) *Bartholomay Brewing Co.* v. *Wyatt; Gramophone and Typewriter, Ltd.* v. *Stanley, supra; vide supra*, pp. 120—122.

(*l*) *Mitchell* v. *Egyptian Hotels*, [1915] A. C., per Lord SUMNER at p. 1040.

(*m*) *Aikin* v. *Macdonald's Trustees*, *infra*, p. 221.

(*n*) Case IV. r. 2; Case V. rr. 3, 2.

average of the sums received in this country (*o*). With regard to securities, the tax is computed "on the full amount, so far as the same can be computed, of the sums which have been or will be received in the United Kingdom . . ." (*p*). With regard to stocks, shares and rents and other possessions, there is brought into the average "the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account," and so forth (*q*). But the more elaborate language employed in Case V. does not appear materially to increase its scope beyond that of Case IV.; nor, conversely, can it be argued that the use of the shorter expression cited in Case IV. shows that any form of receipt specified in Case V. is intended to be excluded from the purview of Case IV. (*r*). If the recipient of income from securities or from, *e.g.*, shares prefers to bring it to this country in the form of "property" rather than of "remittances," there appears to be no reason why he should not be taxed in either case.

The principles determining what constitutes the receipt of sums in the United Kingdom have been laid down in a series of cases (*r*) which arose chiefly in connection with assurance and investment companies where the Crown had exercised its option to charge the tax under Case IV. or Case V. instead of Case I. (*s*).

"A sum of money may be received in more ways than

(*o*) Case V. r. 2.

(*p*) Case IV. r. 2.

(*q*) Case V. r. 2.

(*r*) The rules of the corresponding fourth and fifth cases of the Act of 1842 differ in a somewhat similar way; but the decisions now to be cited take little account of this difference. They were pronounced before the distinction had been laid down between "securities" and "stocks and shares" which is indicated *supra*, p. 213, and though some of them were apparently decided under Case IV., they are of equal authority upon Case V.

(*s*) These decisions have no bearing where the charge is made under Case I.: *Liverpool and London and Globe, &c.* v. *Bennett*, *supra*, p. 129, [1912] 2 K. B. at pp. 53, 60.

one, *e.g.*, by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass; and I am not myself prepared to say that what amongst business men is equivalent to a receipt of a sum of money is not a receipt within the meaning of the statute which your Lordships have to interpret. But to constitute a receipt of anything there must be a person to receive and a person from whom he receives, and something received by the former from the latter, and in this case that something must be a sum of money. A mere entry in an account which does not represent such a transaction does not prove any receipt, whatever else it may be worth" (*t*).

If, therefore, the sum is not actually brought to this country in any form, whether as a remittance or as credit, or as property (and is not treated by its recipient as having been so brought), the mere fact that the sum appears in the accounts of the company, is shown in the annual statements presented to the shareholders, and is taken into account in calculating the profit available for distribution or investment, does not constitute a receipt (or even a "constructive receipt") in the United Kingdom (*u*).

On the other hand, a company cannot by the form of its book-keeping defeat the right of the Crown to tax upon a sum which is actually brought to this country, or which, in order to save the expense of cross-remittances, is not actually brought here, but is, nevertheless, treated by the company as having been brought to this country. An investment company received money on account of interest by the hands of its agents in America; but it also borrowed money in this country on debentures for investment in

(*t*) *Gresham Life, &c.* v. *Bishop,* [1902] A. C. 287, per Lord LINDLEY at p. 296; *vide supra,* p. 152, note (*o*).

(*u*) *Forbes* v. *Scottish Provident, &c.; Forbes* v. *Scottish Widows, &c.* (1895), 23 R. 322; 3 Tax C. 443; *Standard Life, &c.* v. *Allan* (1901), 3 F. 805; 4 Tax C. 446; *Gresham Life, &c.* v. *Bishop, supra.* The last cited case impliedly overrules *Universal Life, &c.* v. *Bishop* (1899), 4 Tax C. 139.

America; instead, therefore, of bringing the interest-money home, and sending the whole of the borrowed money out, it allowed the actual sum received as interest to remain in America, and sent out so much less of the borrowed money, while retaining out of the borrowed money a sum equivalent to the interest that would otherwise have been sent home. This sum was held to have been received in this country; the company had in effect performed its remittances for itself (*x*). In that case the money actually retained in this country was received in the shape of capital, but that fact was held to make no difference. Nor does it make any difference that remittances made to this country of interest on securities out of the United Kingdom are described by the company as repayments of money previously sent out of this country for investment; "the mere calling it capital will not make into capital that which is essentially and in truth profit—and a profit made by the interest received on the securities" (*y*). Again, if a company out of interest accumulated abroad purchases bearer bonds abroad, but brings them to this country and sells them here, the receipt of the proceeds of sale in this country constitutes a receipt of the interest in this country; it is immaterial that the interest accumulated before the year of assessment (or the period of average, as the case may be), so long as the purchase price was received in that year (or period) (*z*).

The cutting of coupons from bearer bonds kept in this country does not constitute the receipt of a sum in the United Kingdom, if the coupons are sent abroad and presented for payment and the money is not remitted home, but allowed to remain abroad (*a*).

(*x*) *Scottish Mortgage Co. of New Mexico* v. *McKelvie* (1886), 14 R. 98; 2 Tax C. 165. This decision is compatible with the general principle laid down in *Gresham Life, &c.* v. *Bishop, supra;* see *Scottish Widows, &c.* v. *Farmer, infra.*

(*y*) *Scottish Provident, &c.* v. *Allan*, [1903] A. C. 129; see per Lord DAVEY at p. 137.

(*z*) *Scottish Provident, &c.* v. *Farmer* (1912), S. C. 452; 6 Tax C. 34.

(*a*) *Scottish Widows, &c.* v. *Farmer* (1909), S. C. 1372; 5 Tax C. 502.

Assessment through Guardian or Trustee.

A guardian who receives income from foreign possessions (or securities) on behalf of children resident in this country is liable to pay tax on their behalf under Case V. (*b*) (or Case IV.). It is not necessary that the guardian should have control of the assets, if he in fact receives and controls the income (*b*).

Conversely, where the beneficiary who receives and controls the income from foreign securities or possessions is not resident in this country, the fact that the trustees in whom the assets are vested are resident here does not affect the liability to tax, or the amount of that liability. And if in such a case the beneficiary is not domiciled in the United Kingdom and no part of the income is received in this country, there is no liability to tax under Case IV. or Case V. (*c*). If any part of the income had been received in this country, it would have been assessable in the name of the trustee (*d*).

Where the income from foreign possessions is received and distributed in this country by trustees, they cannot make any deduction for the expenses of managing and distributing the income (*e*).

(*b*) *Drummond* v. *Collins*, [1915] A. C. 1011, *supra*, p. 212; as to assessment generally in the name of a guardian or trustee, *vide infra*, p. 252.

(*c*) *Williams* v. *Singer; Pool* v. *Royal Exchange, &c.*, [1921] 1 A. C. 65, *supra*, p. 212.

(*d*) *Vide supra*, p. 212, and *infra*, p. 252.

(*e*) *Aikin* v. *Macdonald's Trustees* (1894), 22 R. 88; 3 Tax C. 306.

CHAPTER X.

MISCELLANEOUS PROFITS: SCHEDULE D, CASE VI.

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Profits Chargeable under Case VI.

SCHEDULE D contains words which are intended to prevent any profits not specifically charged by any other Schedule from escaping taxation for that reason (*a*). Those words refer to "interest of money and annuities" which (so far as not covered by Schedules C and E) are now charged by Case III. of Schedule D (*b*); next they refer to "all other annual profits or gains not charged" under any other Schedule; so far as these are "not falling under any of the foregoing Cases," I.—V. of Schedule D, they are charged under Case VI. (*c*).

The "sweeping words" of Schedule D, and the words of Case VI. are not intended to widen the scope of the tax, but only to make specific provision for profits of the same nature as those chargeable to the tax under other Schedules and the other cases of Schedule D; the profit which it is sought to charge must be "really a profit or gain within the meaning of the Income Tax Code" (*d*). A mere enjoy-

(*a*) Sched. D, 1 (b), *infra*, p. 432.

(*b*) See Chap. VIII. and Case III. r. 1 (a), *infra*, p. 441, which includes annuities and yearly interest, and other matters which were not included by the second rule of the third case in Sched. D in the Act of 1842; such matters are therefore not now within the scope of Case VI.

(*c*) Sched. D, 1 (b), read with Case VI., *infra*, p. 444.

(*d*) *A.-G.* v. *Black* (1871), L. R. 6 Ex. 308, *supra*, p. 86; *Tennant* v. *Smith*, [1892] A. C., *infra*, p. 228, per Lord MACNAGHTEN at p. 163; *Severn Fishery Board* v. *O'May*, [1919] 2 K. B. 484. The nature of taxable profits is discussed in Chaps. II.—V. and VII.—XI.

ment is, therefore, not taxable under this Case, or under any other provision (*e*); nor is a voluntary gift which is not connected with the holding of an office (*f*).

Accordingly, a fishery board under the Salmon and Freshwater Fisheries Acts, 1861 to 1892, is not taxable in respect of the net receipts derived from fishing licences, or from penalties paid by persons fishing without a licence, because these are not analogous to the profits of a trade (*g*).

Profits of the same nature as those taxed under No. III. of Schedule A (*h*) are, however, chargeable under Case VI. of Schedule D, if they are not profits of any of the "concerns" referred to in No. III. (*i*); and, therefore, it was held that contributions made by certain railway companies under compulsion of statute to the upkeep of an inland navigation were chargeable under Case VI. in the alternative (*k*).

Assessments made under Case VI., as an alternative to Case I., have been upheld (without a decision as to which case was the more appropriate) in relation to the receipts of a hospital from letting rooms for entertainment (*l*), of a golf club from visitors' green fees (*m*), and of a farmer from the services of a stallion (*n*).

It has been suggested, but not decided, that interest, discounts, &c., which are taxable under Case III., and the assessment of which is measured by the profits of the previous year, are taxable under Case VI. as regards the first year in which there are any transactions of the kind, because the first year's transactions would otherwise escape taxation (*o*).

(*e*) *Tennant* v. *Smith*, *supra*.

(*f*) *Turner* v. *Cuxon* (1888), 22 Q. B. D. 150, *infra*, p. 235; as to annuities, see Case III. and Chap. VIII.

(*g*) *Severn Fishery Board* v. *O'May*, *supra*.

(*h*) See Chap. III.

(*i*) *A.-G.* v. *Black*, *supra*.

(*k*) *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449.

(*l*) *Coman* v. *Rotunda Hospital (Governors)*, [1921] 1 A. C. 1, *supra*, p. 107.

(*m*) *Carlisle and Silloth Golf Club* v. *Smith*, [1912] 2 K. B. 177; [1913] 3 K. B. 75, *supra*, p. 109.

(*n*) *Malcolm* v. *Lockhart*, [1919] A. C. 463, *supra*, p. 94.

(*o*) *National Provident Institution* v. *Brown*, [1920] 3 K. B. 35, *supra*, p. 200.

As to most kinds of taxable profits, then, there is some more specific Schedule or Case which renders the application of Case VI. of Schedule D either unnecessary or inappropriate; but three classes of matters may be mentioned to which this Case applies more particularly. First, profits made by the letting of a furnished house are taxable under Case VI.; no deduction is allowable for rent paid by the lessor in order to provide himself with another house during the letting of his own (*p*).

Payments not Charged before Passing of Annual Act.

Secondly, with regard to half-yearly or quarterly payments made on account of interest, dividends, or other annual profits before the passing of the yearly income tax Act, if these have been paid without charge or deduction of tax (*q*), or if the tax has not been charged or deducted at the rate ultimately imposed by that Act when passed, it is expressly provided that the payments are to be charged under Case VI. of Schedule D, with the tax or the balance of the tax that remains due. For this purpose the agents (if there are any such) entrusted with the making of the payment are to furnish the Commissioners of Inland Revenue with a list of the payees and of the amounts paid to them (*r*).

The language of this enactment (*r*) is remarkably loose; it is coupled with another provision which enables in similar circumstances any person liable to pay any rent, interest, annuity, or other annual payment, to make in arrear his full deduction of tax against the payee (*s*); there is no mention here of dividends (*t*). Little light, however, is thrown by this connection, save that both enactments are apparently intended to prevent a person escaping liability altogether, or liability at the full rate imposed for the year,

(*p*) *Wylie* v. *Eccott* (1912), 6 Tax C. 129.

(*q*) *Vide supra*, p. 197.

(*r*) Sect. 211 (1), *infra*, p. 400.

(*s*) Sect. 211 (2); a limitation was read into the wide terms of *this* subsection in *Hill* v. *Kirshenstein*, *supra*, p. 198.

(*t*) *Vide supra*, pp. 197, 198.

merely because he has received a payment taxable at the source before the Finance Act of the year is passed.

Note first, that if the payment in question is an annual, a weekly, or a monthly payment, section 211 (1) has no application, for it applies only to payments made quarterly or half-yearly; and secondly, that if the profits out of which the payments are made are themselves taxable, this sub-section manifestly cannot apply; for if it did, it would tax the same sum twice over, first in the hands of the payer, and again in that of the payee. The assessment is apparently to be made on the payee, and not on the payer.

Dividends subject to Dominion Income Tax.

Thirdly, in connection with the relief given in respect to Dominion income tax (*u*), it is provided that where income is taxable in the United Kingdom, but Dominion income tax has been paid or is payable in respect of it, the amount of the Dominion tax is to be added in calculating income for purposes of the United Kingdom tax (*x*). Where the income in question consists of "dividends" entrusted to any person in the United Kingdom for payment, and the Special Commissioners are satisfied that he is not in a position to ascertain the proper amount of this addition, the amount of the addition shall be charged on the recipient himself under Case VI. (*y*).

"Dividends" for this purpose includes any interest, annuities, dividends and shares of annuities payable out of any public revenue, and charged under Schedule C (*z*); as well as any interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares, or securities of any foreign or colonial company, society, adventure or concern, and any annuities, pensions,

(*u*) *Vide supra*, p. 28.
(*x*) Finance Act, 1920, s. 27 (4), *infra*, p. 474.
(*y*) *Ibid.*, proviso (a).
(*z*) See Chap. V.

or other annual sums payable out of the funds of any institution in India (*a*).

Computation of Profits.

Profits charged under Case VI. are to be either computed on the amount arising in the year of assessment, or averaged out over any period greater or less than one year that is directed by the Commissioners (*b*). This rule is also applied to the profits of a trade or profession set up within the three years' period, and charged under Case I. and II. (*c*). Apart from that, and from cases of loss and succession (*d*), it provides a unique instance of the income tax being charged (otherwise than by deduction) under Schedule D on the profits of the actual year for which it is charged.

(*a*) Sched. D, Misc. Rules, r. 7, *infra*, p. 446; see Chap. VIII., pp. 167 *sqq.*
(*b*) Case VI. r. 2, *infra*, p. 444.
(*c*) Cases I. and II. r. 1 (2), *infra*, p. 433; *vide supra*, p. 163.
(*d*) *Vide supra*, pp. 167 *sqq.*

CHAPTER XI.

INCOME FROM PUBLIC OFFICES AND PENSIONS: SCHEDULE E.

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Scope of Schedule E.

SCHEDULE E provides for the taxation of the profits received in respect of public offices and employments of profit, including offices and employments held in the United Kingdom under a company or other corporation (*a*); the word "public" does not signify that the office or employment "has duties direct to the public"; it has, indeed, "practically disappeared" (*aa*). Annuities, pensions or stipends payable by the Crown or out of the public revenue of this country, are also taxed under this Schedule (*b*). But the second branch of the Schedule is narrower than the first, annuities, &c. payable by a company or other body of persons not being taxable under this Schedule, but under Schedule D. Case III. (*c*). By annuities are meant here "annuities" of a similar nature to pensions, and not annuities bought as invest-

(*a*) Sched. E, read with rules 1 and 6, *infra*, pp. 446, 447; *Pickles* v. *Foster*, [1913] 1 K. B. 174, *infra*, p. 237.

(*aa*) Per ROWLATT, J., in *Great Western Rail. Co.* v. *Bater*, [1920] 3 K. B. 266, at p. 273, *infra*, p. 237. The word "public" is used in a much narrower sense in Sched. C, which charges interest, &c. payable out of national revenues only, and not that payable out of the revenue of a company or other corporation; see note (*e*), *supra*, p. 101; and note (*t*), *infra*, p. 237.

(*b*) Sched. E.

(*c*) *Supra*, p. 184; *Duncan's Exors.* v. *Farmer*, [1909] S. C. 1212; 5 Tax C. 417; *infra*, p. 236.

ments (*d*). Annuities, pensions, &c. paid in this country out of the revenues of any self-governing colony or of any foreign state, do not appear to be taxable under Schedule E (*e*).

Public Offices and Employments of Profit.

If by reason of an office or employment a profit accrues to the holder, that office or employment is an office or employment of profit, even though the office or employment was gratuitous up to the moment when the profit accrued (*f*).

"Everything in the shape of a profit or gain arising from a public office or employment, which the Legislature intended to be chargeable with duty, is ascertainable and assessable under the rules of Schedule E and under those rules only;" Schedule D does not apply to these offices or employments (*g*).

The scope of the Schedule is not limited to offices or employments which are substantive positions and which have an existence independent of the holder or to which there is a definite succession; it may include the employment of a man who is one of a class of employees and who may be called upon to do any of the duties ordinarily falling to that class (*h*).

The salaries, &c. of officers of the Civil Service, Navy, Army and Air Force are taxed under this Schedule (*i*). In addition it applies to the holders of "offices or employments of profit" in the following categories:—

"(g) . . . under any ecclesiastical body;

(*d*) These are taxed under Sched. D, Case III., *supra*, p. 185.

(*e*) But under Sched. C, *supra*, p. 100; neither Schedule expresses the distinction clearly.

(*f*) *Cowan* v. *Seymour*, [1920] 1 K. B. 500, per ATKIN, L.J., at p. 511, per YOUNGER, L.J., at p. 518.

(*g*) Per Lord WATSON in *Tennant* v. *Smith*, [1892] A. C. 150, at p. 160; *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 236.

(*h*) *Great Western Rail. Co.* v. *Bater*, [1920] 3 K. B. 266; [1921] W. N. 69, *infra*, p. 237.

(*i*) Sched. E, r. 6 (a)—(f), *infra*, p. 447. Sched. E applies to such officers even though their duties are performed and salaries, &c. paid outside the United Kingdom, rule 18 (2), *infra*, p. 450.

"(h) . . . under any company or society, whether corporate or not corporate;

"(i) . . . under any public institution, or on any public foundation of whatever nature, or for whatever purpose established;

"(j) . . . under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls or duties;

"(k) . . . all other public offices, or employments of profit which are of a public nature" (*k*).

In order to bring within the Schedule any office or employment in classes (g)—(k) inclusive, the duties must be performed and the profits payable within the United Kingdom (*l*).

Basis of Assessment.

The tax is assessed upon "all salaries, fees, wages, perquisites or profits" derived from the office or employment (*m*); "perquisites" in their turn are deemed to be "such profits as arise in the case of exercising an office or employment from fees or other emoluments" (*n*).

In general, the tax is assessed on the amount received in the year of assessment (*o*); but that portion of the profits which consists of "perquisites" may be estimated either on the amount received (*p*) in the preceding year or on the yearly average of the three preceding years (*q*). Any duties or other sums payable or chargeable on the profits by Act of Parliament are to be deducted, where actually borne by the party taxed (*r*); allowance is made for all official deductions and payments made on receipt of the profits (*s*),

(*k*) *Ibid.*, rule 6 (g)—(k), *infra*, p. 448.

(*l*) *Pickles* v. *Foster*, [1913] 1 K. B. 174, *infra*, p. 237.

(*m*) Rule 1, *infra*, p. 447.

(*n*) Rule 4.

(*o*) Rule 1. Provision is made in rule 2 to absolve the holder of the office or his executors in respect of any period after quitting office or death; and in rule 5 to increase the assessment where the salary, &c. is increased.

(*p*) The word in rule 4 (1) is "profits"; but its meaning in that place appears to be as stated in the text.

(*q*) Rule 4; the discretion appears to lie with the taxing authorities.

(*r*) Rule 1; these words are discussed *infra*, p. 231.

(*s*) Rule 8.

as well as for travelling and other expenses wholly and necessarily incurred in performing the duties of the office (*t*). There can be no deduction on this account for the travelling expenses of persons who reside for their own convenience at a distance from the scene of their duties (*t*).

The profits assessed include voluntary gifts, provided they are received in virtue of the office; the fundamental question with regard to this matter is whether the sum dealt with has accrued as a profit by reason of an office; and if a gift is a mere gratuity or testimonial given of free will to the holder of an office on or after his ceasing to hold the office, the sum so received is not taxable (*u*).

"Now that judgment (*x*) . . . . is certainly an affirmation of a principle of law that a payment may be liable to income tax although it is voluntary on the part of the persons who made it, and that the test is whether, from the standpoint of the person who receives it, it accrues to him in virtue of his office. . . . . That seems to me to be the test; and . . . . the liability to income tax is not negatived merely by reason of the fact that there was no legal obligation on the part of the persons who contributed the money to pay it" (*y*).

"The question is not what was the motive of the payment, but what was the character in which the recipient received it? Was it received by him by reason of his office?" (*z*).

The word "profits" "in its ordinary acceptation appears to me to denote something acquired which the acquirer becomes possessed of and can dispose of to his advantage—in other words, money—or that which can be

(*t*) Rules 9, 10; *Cook* v. *Knott* (1887), 2 Tax C. 246; *Revell* v. *Elworthy* (1890), 3 Tax C. 12, *infra*, p. 237; see also cases under Ecclesiastical Offices, &c., *infra*, p. 234.

(*u*) *Cowan* v. *Seymour*, [1920] 1 K. B. 500, per YOUNGER, J., at p. 518.

(*x*) *I. R.* v. *Strong* (1878), 18 S. L. R. 704; 1 Tax C. 207.

(*y*) *Herbert* v. *McQuade*, [1902] 2 K. B. 631, per COLLINS, M.R., at p. 649, *infra*, p. 235.

(*z*) *Cooper* v. *Blakiston*, [1907] 2 K. B. 688, per BUCKLEY, L.J., at p. 703, *infra*, p. 235. In *Cowan* v. *Seymour*, *supra*, however, the motive of the payment was not altogether disregarded.

turned to pecuniary account" (*a*). "The thing sought to be taxed is not income unless it can be turned into money" (*b*).

Accordingly, the sum upon which the tax is levied, upon the one hand includes gifts like Easter Offerings made to an incumbent by virtue of his office (*c*); upon the other, it does not include the annual value of a bank manager's residence in which he resides rent free, and in which he is bound to reside as part of his duty (*d*).

A yearly allowance made by a city corporation to a police officer to provide suitable clothing for himself forms part of the profits of his office for the purpose of Schedule E (*e*).

Contributions to Provident Funds, &c.

In ascertaining the profits assessable, the amount is to be deducted of "duties or other sums payable or chargeable on the same by virtue of any Act of Parliament, where the same have been really and *bonâ fide* paid and borne by the party to be charged" (*f*). If the decision in *Hudson* v. *Gribble; Bell* v. *Gribble* (*g*) is correct, these words have now no effect; for "experience can supply no examples of such taxes in operation at the present day" (*h*); and that decision shuts out the only other class of "sums payable" which it has been sought to deduct under this direction. It had previously been held that the words allowed a deduction from the profits of a sum contributed

(*a*) *Tennant* v. *Smith*, [1892] A. C. 150, *supra*, p. 26, per Lord WATSON at p. 159. Lord Watson goes on to recite the fourth rule of Sched. E as it stood in the Act of 1842, where it contained the words "and payable either by the Crown or by the subject," which are omitted from rule 4 as it now stands in the Act of 1918. But the other Lords did not refer to those words; and it is submitted that in spite of this alteration, the principle stated in the words quoted in the text, as well as the actual decision in the case, are still applicable.

(*b*) *Ibid.*, per Lord HALSBURY, L.C., at p. 157.

(*c*) *Blakiston* v. *Cooper*, [1909] A. C. 104, *infra*, p. 235.

(*d*) *Tennant* v. *Smith*, *supra*; the case arose with regard to exemption from tax, *vide supra*, p. 26.

(*e*) *Fergusson* v. *Noble*, [1919] S. C. 534; 7 Tax C. 176.

(*f*) Rule 1, *infra*, p. 447.

(*g*) [1903] 1 K. B. 517.

(*h*) *Ibid.*, per MATHEW, L.J., at p. 529.

annually by a Poor Law officer to the common fund of the union in order to provide for his superannuation allowance; the Poor Law Officers Superannuation Act, 1896, made this contribution compulsory (*i*). In *Hudson* v. *Gribble; Bell* v. *Gribble*, by a scheme made under the Manchester Corporation Act, 1891, officials of the corporation who had entered their service before the passing of that Act were allowed, and those who had entered it afterwards were compelled, to contribute to a Thrift Fund in order to provide allowances after retirement or death, to themselves or their representatives; the contributions were made by way of deduction before payment of the salaries. It was held that in neither case was a deduction of the contribution admissible for purposes of income tax (*k*); VAUGHAN WILLIAMS, L.J., saw no distinction between these cases and *Beaumont* v. *Bowers* (*l*), which he held to have been wrongly decided; the other Lords Justices did not say so, but the same result follows from their judgments.

It is submitted that the decision in *Beaumont* v. *Bowers* is correct, and that in *Hudson* v. *Gribble; Bell* v. *Gribble* wrong. The first ground of the latter decision was that the words above cited from Rule 1 did not apply to the contributions in question, and that they were not "payable or chargeable by virtue of an Act of Parliament" because, as VAUGHAN WILLIAMS, L.J. said, "A person who chooses to accept employment in the service of the Manchester Corporation, voluntarily enters into an employment which he knows will involve as one of its terms an agreement by him that a certain percentage shall be deducted from his salary or wages and appropriated to purposes defined by the scheme" (*m*); and STIRLING, L.J. said, "these sums . . . are really payable because the person concerned has thought fit voluntarily to enter into the service" (*m*).

Now no one enters into any service, or accepts any

(*i*) 59 & 60 Vict. c. 50, s. 12; *Beaumont* v. *Bowers*, [1900] 2 Q. B. 204.
(*k*) *Hudson* v. *Gribble; Bell* v. *Gribble, supra.*
(*l*) *Supra.*
(*m*) [1903] 1 K. B. at pp. 526, 528.

office, under legal compulsion; and therefore if the Lords Justices were right in this view, the words cited from Rule 1 would have no application to the profits of any office or employment except in a case where it had been accepted before the passing of an Act of Parliament which makes the payment obligatory.

The second ground of the decision was that if the words cited apply to this case, the provisions of sect. 54 of the Income Tax Act, 1853, which specifically allowed deductions for contributions to secure provision for widows and children (*n*) are superfluous. This is a very unsafe argument in view of the numerous overlapping provisions of the Income Tax Acts; and it is double-edged in this case, for the Lords Justices, though they refused to hold that those provisions in the Act of 1853 were unnecessary, decided that the words in Rule 1 of Schedule E had no application; and no reason is given for choosing to call the one enactment superfluous rather than the other.

Another ground of the decision was that the sums were not deductible as having been "really and *bonâ fide* paid and borne" by the officer, because they would (apart from misconduct) be returned with interest on death or retirement; if this principle were applied in assessing trade profits, no deduction would be admissible for expenses, for no trade expenses are incurred except in the hope of recovery; and it has never been suggested that such expenses are not "really and *bonâ fide* paid and borne."

Further, no reference was made to the rule allowing a deduction from the emoluments of any office or employment for "all official deductions and payments made on receipt" of them (*o*).

In a subsequent case, sums placed by the governing body of a public school to the credit of assistant masters for the purpose of making provision for their death or retirement after a certain length of service, were held

(*n*) These now appear in sect. 32 of the Act of 1918, *infra*, p. 347. As to construction, *vide supra*, p. 7.

(*o*) Act of 1918, Sched. E, r. 8, *infra*, p. 448; in the Act of 1842, this was the 9th rule of Sched. E in sect. 146.

to form part of the taxable profits of the masters and to be properly added to their salaries; the masters had no option to take the money in cash year by year, rather than in the form of credits under the provident scheme (*p*). The words cited above from Rule 1 did not apply here, because there was no question of any deduction from salary; CHANNELL, J. considered the case to be covered by the judgments in *Hudson* v. *Gribble*; *Bell* v. *Gribble* (*q*), but pointed out that these went further than earlier cases (*r*) in deciding that a sum, retained by a person (who would otherwise pay it) by reason of a right arising under the same contract under which he makes payments to the person taxed, is to be added to the sums actually paid to the latter in ascertaining the payee's taxable income.

Payments or deductions to which a person is liable under an Act of Parliament or under the terms and conditions of his employment to provide for his widow or children after death give rise to a deduction in the same way as life insurance and deferred annuity payments (*s*); but this relief does not extend to payments or deductions made to provide for the person himself on retirement.

Ecclesiastical Offices.

A series of decisions has been given with regard to the taxation under Schedule E of the holders of offices or employments under ecclesiastical bodies (*t*). A voluntary gift made annually at Christmas to a minister of the Church of Scotland is to be included in the profits assessable (*u*); so is the Easter Offering which it is customary in the Church of England to make to the incumbent of a benefice, although it is true that if he were not personally

(*p*) *Smyth* v. *Stretton* (1904), 5 Tax C. 36.

(*q*) *Supra.*

(*r*) Such as *Mersey Docks and Harbour Board* v. *Lucas*, *supra*, p. 137.

(*s*) Sect. 32, as amended by Finance Act, 1920, s. 26 (1), *infra*, p. 347. These matters are discussed *supra*, p. 18.

(*t*) Sched. E, r. 6 (g), *infra*, p. 448.

(*u*) *I. R.* v. *Strang* (1878), 15 S. L. R. 704; 1 Tax C. 207. The principles upon which voluntary gifts are or are not taxable are stated *supra*, under "Basis of Assessment."

esteemed his parishioners would make him a smaller gift, or would refrain from making the gift at all (*x*). The profits of a beneficed clergyman of the Church of England include also a grant made annually to him in order to supplement the inadequate income of his benefice, out of a fund raised voluntarily for the augmentation of such incomes (*y*); the same conclusion was reached with regard to the stipend of a minister of another denomination, which had been similarly augmented, and COZENS-HARDY, L.J., said that as this was not primarily a personal gift, it made no difference that the trustees of the fund, in considering how to distribute it, had regard to the pecuniary position of the ministers (*z*). On the other hand, a grant made out of a curates' augmentation fund to a clergyman of the Church of England not as being curate of a parish but for having worked during many years without reproach, was held not to arise from or by reason of an office or employment, and not to be taxable under Schedule E (*a*).

A clergyman or minister of any religious denomination may deduct (under Schedule E or any other Schedule) from his profits "any sums of money paid or expenses incurred by him wholly, exclusively and necessarily in the performance of his duty as a clergyman or minister" (*b*). A payment made to an assistant minister for the performance of the minister's duty does not give rise to such a deduction (*c*), nor do the expenses of claiming an augmentation of stipend (*d*). Deduction may, however, be made for

(*x*) *Blakiston* v. *Cooper*, [1907] 2 K. B. 688; [1909] A. C. 104. Lord ALVERSTONE, C.J., [1907] 2 K. B. at pp. 698, 699, throws doubt upon the decision in *Turton* v. *Cooper* (1905), 92 L. T. 863; 5 Tax C. 138, that an Easter offering was not taxable where it was actuated by the poverty of the recipient.

(*y*) *Herbert* v. *McQuade*, [1902] 2 K. B. 631.

(*z*) *Poynting* v. *Faulkner* (1905), 5 Tax C. 145. This seems finally to dispose of the decision in *Turton* v. *Cooper*, *supra*.

(*a*) *Turner* v. *Cuxon* (1888), 22 Q. B. D. 150; the authority of this case does not appear to be shaken by the later decisions cited in the text; see per Lord ALVERSTONE, C.J., in *Blakiston* v. *Cooper*, *loc. cit.*

(*b*) General Rules, r. 2 (1) (a); see also Sched. E, rr. 9 and 10, *infra*, p. 448; and cf. Sched. D, Cases I. and II. r. 3 (a), *infra*, p. 434.

(*c*) *Lothian* v. *Macrae* (1884), 12 R. 336; 2 Tax C. 65; *Jardine* v. *Gillespie*, [1907] S. C. 77; 5 Tax C. 263.

(*d*) *Jardine* v. *Gillespie*, *ubi sup.*

communion expenses, expenses incurred in visiting the congregation and attending meetings, and in buying stationery (*e*).

The annual value of a house necessarily occupied by a clergyman for the discharge of his duties does not form part of his profits taxable under Schedule E (*f*); it depends on circumstances whether he is taxable for it under Schedule A (*g*).

A clergyman or minister who uses part of his dwelling-house for the performance of his duties may deduct from his profits 1/8th of the rent (if he pays rent) or 1-8th of the annual value (if the house is rent-free) (*h*).

An annuity to a retired minister granted from a voluntary fund on condition of his resigning his duties, is taxable not under Schedule E but under Schedule D (*i*).

Offices or Employments under Companies or Societies.

The profits of employees of companies or societies (whether corporate or not), as such employees are taxable under Schedule E (*k*). A salary received as managing director of a company is so taxable (*l*), but not the wages of workmen employed by the week or month, such as the engine-drivers, mechanics and porters of a railway (*m*). The salary of a clerk (fixed at a yearly rate and payable monthly), who is employed by a railway company, is,

(*e*) *Charlton* v. *I. R.* (1890), 17 R. 785; *Jardine* v. *Gillespie*, *ubi sup.*

(*f*) Cf. *Tennant* v. *Smith*, [1892] A. C. 150, *supra*, p. 231.

(*g*) See *McDougall* v. *Sutherland* (1894), 21 R. 753; 3 Tax C. 261; *Corke* v. *Fry* (1895), 22 R. 422; 3 Tax C. 335, *supra*, p. 26. If he is not so taxable, he may claim a certain addition to his "earned income" deduction: Finance Act, 1919, s. 22, *infra*, p. 465; *vide supra*, p. 14.

(*h*) General Rules, r. 2 (1) (b), *infra*, p. 451; this gets rid of the decision to the contrary in *Charlton* v. *I. R.* (1890), 17 R. 785.

(*i*) *Duncan's Exors.* v. *Farmer*, [1909] S. C. 1212; 5 Tax C. 417; *supra*, p. 227.

(*k*) Sched. E, r. 6 (h), *infra*, p. 448; if they are also shareholders, their profits as such will be taxable under Sched. D, and not under this Schedule; cf. *Langston* v. *Glasson*, *infra*, p. 238.

(*l*) *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 239; *Bray* v. *Brothers* (1897), 3 Tax C. 550.

(*m*) *A.-G.* v. *Lancashire and Yorkshire Rail. Co.* (1864), 33 L. J. Ex. 163, *supra*, p. 132. As to taxation of weekly wage earners under Sched. D, *vide supra*, p. 175.

however, taxable under Schedule E, although he holds no definite appointment in the company's service, but is engaged to do any clerical duties that may be assigned to him (*n*). A managing director of a limited company which has taken over his business cannot deduct against his salary his average loss on the business before it was taken over (*o*). The travelling expenses incurred by directors in coming from home to attend their meetings are not deductible from their remuneration (*p*). The directors must pay the tax under this Schedule out of their own money, and the company cannot pay it for them (*q*).

Money paid by the shareholders to the liquidator of a company (when his employment was practically at an end), as a tribute for his services as such, and not as a payment for those services, is not subject to tax (*r*).

The servants of a company trading abroad are not liable to tax under this Schedule if their employment is exercised wholly outside the United Kingdom (*s*).

Offices, &c. under Public Institutions.

The remuneration of servants of public institutions of every kind, including local authorities, is taxed under Schedule E (*t*). A bursar of a college is taxable for his

(*n*) *Great Western Rail. Co.* v. *Bater*, [1920] 3 K. B. 266; [1921] W. N. 69, *supra*, p. 228; the practice approved in the case last cited was followed.

(*o*) *Bray* v. *Brothers*, *supra*.

(*p*) *Revell* v. *Elworthy, Ltd.* (1890), 3 Tax C. 12, following *Cook* v. *Knott*, *supra*, p. 230.

(*q*) *Boschoek Proprietary Co., Ltd.* v. *Fuke*, [1906] 1 Ch. 148, 162.

(*r*) *Cowan* v. *Seymour*, [1920] 1 K. B. 500, *supra*, p. 228; the decision depended on the inference of fact summarized in the text, and would not necessarily govern other cases that might be apparently similar.

(*s*) *Pickles* v. *Foster*, [1913] 1 K. B. 174, *supra*, p. 229.

(*t*) Sched. E, r. 6 (i), (j), (k), *infra*, p. 448. Para. (j) is hardly necessary, but draws attention to particular cases which are mostly covered by the general terms of para. (i); and para. (k) brings in any public offices, &c. which may not be covered by the previous paras. of the rule. That being so, the exact meaning of the phrase "public institution" is perhaps unimportant; it is not defined in this Act or elsewhere, but the following cases may be consulted upon similar phrases in other Acts: *Hall* v. *Derby Sanitary Authority* (1885), 16 Q. B. D. 163; *Royal Masonic Institution* v. *Parkes*, [1912] 3 K. B. 212; *Shaw* v. *Halifax Corporation*, [1915] 2 K. B. 170; as well as the decisions on the phrase "public school" in the Income Tax Acts, *infra*, p. 264.

stipend as such, but if he were a member of the college, he would not be taxable under this Schedule for any share of the collegiate income (*u*). The chaplain of a charitable school (*x*), and the master and mistress of a national school (*y*), are taxable on their salaries. In the case of school teachers, the wages of a domestic servant are not deductible (*y*). The weekly wages of mechanics and other employees of similar status are not taxable under this Schedule (*z*).

Assessment and Collection.

Under Schedule E the tax is collected by deduction against the salary and other payments made to the person charged, and is not as a rule levied from him direct; that is to say, it is deducted in the case of official pay (*a*) by the public office or department concerned, or by a Crown receiver or paymaster or any agent who pays the salary, &c. for the Crown (*b*); in cases of offices or employments under any bodies or persons other than the Crown or a Government Department it is deducted by any officer, receiver or agent who pays the salary, &c. (*c*). The deduction must be made even though the salary is

(*u*) *Langston* v. *Glasson*, [1891] 1 Q. B. 567. The words in sect. 54 of the Act of 1842, on which CHARLES, J., relies at p. 575, to show that there will be no double taxation in consequence of this decision, are not repeated in the Act of 1918; but even without those words the salaries of servants of a college appear to be deductible in arriving at the profits of the college, so far as these are taxable, *vide infra*, p. 263.

(*x*) *In re School for Indigent Blind*, [1898] 2 Ch. 669, *infra*, p. 239.

(*y*) *Bowers* v. *Harding*, [1891] 1 Q. B. 561. The deduction claimed was held not to come within rule 9, *infra*, p. 448.

(*z*) Cf. *A.-G.* v. *Lancashire and Yorkshire Rail. Co.*, *supra*, p. 236.

(*a*) The definition in para. (3) of rule 11, *infra*, p. 449, must be read with para. (1); otherwise "official pay" would include, *e.g.*, a salary paid by a limited company, which is clearly not the intention. Note that the word "public office" is used in para. (1) in the sense of a place, and not of an employment, as in the opening words of the Schedule and in rule 6 (k), *infra*, p. 448.

(*b*) Rules 11, 15, 18, *infra*, pp. 449, 450. "Department" in rule 18 means a Government Department; and the rule does not apply to a limited company so as to make its servants taxable as if they were employed at its head office, unless they are so employed in fact: *Pickles* v. *Foster*, [1913] 1 K. B. 174, *supra*, p. 229.

(*c*) Rules 12 and 15, *infra*, pp. 449, 450; sect. 106 (1), *infra*, p. 364; *vide infra*, p. 300. Offices under a railway company are specially provided for in rule 7.

fixed by a local Act and is directed to be paid without any deduction for taxes (*d*). It may be made against payments of arrears (*e*). But if it cannot be so deducted, or if the salary, &c. have already been paid, then the tax is levied directly upon the persons charged (*f*); this cannot however be done, unless that person has previously been served with a notice of assessment and a demand for payment, and it is not enough to leave the notice at the office of his employer (*g*).

The agent or officer who makes the payment is not himself made chargeable with the tax (*h*), but if he has deducted the tax he must pay it over to the Inland Revenue Authorities (*i*).

Provision is made for the apportionment of tax where during the year there is a change in the holding of the office or employment or the annuity ceases (*k*).

If a deputy executes the office or employment, and receives the profits for another, he is charged with the whole of the tax and may deduct the proper proportion against the profits that he hands over (*l*). In the converse case, where the holder of the office or employment has to pay over any part of the profits, or to pay an annuity, pension or stipend out of them, or to pay a salary or wages to a deputy, clerk or other person, the holder is also liable for the whole tax, and may make a similar deduction (*m*).

(*d*) *In re School for Indigent Blind at Liverpool*, [1898] 2 Ch. 669.
(*e*) Rules 11 (1), 12.
(*f*) Rules 13, 18 (5).
(*g*) If these considerations have not been complied with, no distress can be levied: *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 331.
(*h*) The contrary is the case under Sched. C, *supra*, p. 103.
(*i*) Rules 11 (1), 12; see also sect. 106 (1), *infra*, p. 364.
(*k*) Rules 2, 3.
(*l*) Rule 14.
(*m*) Rules 16, 17.

CHAPTER XII.

PERSONS LIABLE TO BE ASSESSED.

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Liability to Direct Assessment.

As has been seen in the preceding chapters, practically everything that is income is within the scope of the income tax, and a great part of the tax is levied by way of deduction at the source (*a*). Consequently the provisions which are dealt with in this chapter, as to the particular persons who are liable to make returns, to be assessed to the tax, and to pay it to the Inland Revenue collectors are, in the main, machinery provisions; they do not as a rule impose a burden which would not otherwise be imposed, but direct where the burden is, in the first instance, to be placed.

Residence in the United Kingdom does, however, in several classes of cases, of itself impose a burden; while in others, it is of importance only as indicating the person through whom a non-resident person may be assessed. A non-resident, for instance, who possesses property or exercises a trade within the United Kingdom is liable to the tax in respect of the profits of that trade (*b*). The question of "residence" of companies in this country

(*a*) See Chaps. II., V., VIII., XI.
(*b*) Sched. D, 1 (a) (iii), *infra*, p. 432.

is bound up with the question whether a trade is carried on here, and has been discussed in that connection (*c*); but the residence of individuals, and the provisions by which non-residents are made assessable in the name of residents, are dealt with in this chapter.

So far as the tax is leviable upon the income derived from the ownership or occupation of lands and hereditaments, the provisions as to the persons who have actually to pay the tax are so much bound up with those which impose the burden, and with those which regulate deduction against landlords and chargees, that it has been thought best to deal with them in one place (*d*). But the provisions for the special cases of infancy, death and so on, considered in this chapter, have their bearing upon Schedules A and B as well as upon other Schedules.

With the exceptions above indicated, it is proposed now to discuss the provisions indicating what persons are liable to pay the tax directly, as distinguished (except in the case of companies' dividends) from provisions which compel other persons to submit to deduction of tax at the source (*e*).

Persons Assessable under the various Schedules.

Under Schedule A, No. I., and under Schedule B, the person primarily liable to the income tax is the occupier (who may happen also to be the owner) of the lands the profits of which are assessed (*f*). Under No. II. of Schedule A, the class of person assessable varies with the nature of the hereditament (*g*); under No. III., the person or body carrying on the concern, or their agents or officers are primarily liable (*h*). In all these cases (except Schedule B) there is a right to deduct tax against payments of rent, &c. (*i*).

(*c*) *Supra*, pp. 112 *sqq*.
(*d*) See Chaps. II. and III.
(*e*) The provisions which give trustees, agents, &c. the right to reimburse themselves stand on a different footing: *vide infra*, pp. 252 *sqq*.
(*f*) *Supra*, pp. 49, 93.
(*g*) *Supra*, pp. 64—67.
(*h*) *Supra*, pp. 70 *sqq*.
(*i*) *Supra*, pp. 55, 59, 70.

Under Schedule C, the liability in the first instance is upon the Bank of England and other authorities and agents entrusted with the payment of interest, &c. out of public revenues, and they have the right to deduct tax against such payments (*k*).

Under Schedule D, the tax is to be charged on and paid by the persons or bodies receiving or entitled to the income in respect of which tax is charged under that Schedule (*l*); but companies (*m*) and other persons (*n*) are entitled to deduct tax against dividends (*m*) and certain payments (*n*), and a great proportion of the tax raised under Schedule D is so collected.

Under Schedule E, the tax upon offices and employments of profit and upon the annuities, pensions, &c. there charged (*o*) is in general accounted for by the officer, receiver or agent who pays the emoluments, and has a right to deduct the tax in so doing (*p*); or the recipient may be assessed direct in certain cases (*q*).

The provisions above summarily referred to must be read subject to the principles and rules now to be discussed, which deal with bodies of persons, and with classes of individuals; many of these apply to more than one Schedule, and some of them to all the Schedules.

Bodies of Persons: Companies.

The word "person" appears in many places in the Income Tax Acts, and it may depend upon the context whether the word refers to individuals only, or whether it includes bodies of persons (*r*). With regard to liability to assessment the question is not left in doubt:—

"Every body of persons shall be chargeable . . . . in

(*k*) See Chap. V.

(*l*) Sched. D, Misc. Rules, r. 1, *infra*, p. 444.

(*m*) *Infra*, p. 243.

(*n*) *Vide supra*, pp. 181, 189.

(*o*) See Chap. XI.

(*p*) Sched. E, rr. 11, 18, *infra*, p. 449, as to official pay; rule 12 as to other emoluments; rule 7 (2) as to offices, &c. held under a railway company; sect. 106, *infra*, p. 364, as to offices, &c. under companies and bodies generally.

(*q*) Sched. E, rr. 13, 18 (5).

(*r*) Cf. *Curtis* v. *Old Monkland Conservative Association*, [1906] A. C. 86,

like manner as any person . . . . . "(*s*); and "body of persons" means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate (*t*).

Any body of persons chargeable is assessed through the chamberlain or other officer acting as its treasurer, auditor or receiver for the time being, or if it is a company, through its secretary or other officer (by whatever name called) who performs the duties of secretary. Such chamberlain, officer or secretary may retain sufficient to pay the tax out of any money coming into his hands on behalf of the body (*u*). He is liable to make the returns, and to declare the proper description of the body (*x*).

Companies and other Bodies are assessable on the whole of their Profits.

Any body of persons liable to the tax is charged on the full amount of its profits before any dividend is made of those profits in respect of any share, right or title thereto; and the body is entitled in paying the dividend to deduct the tax appropriate thereto (*y*).

where an exemption conferred upon "persons" by sect. 163 of the Act of 1842 was held not to apply to an unincorporate association. But the ambiguity referred to in the text is of less importance now that the deductions and allowances directed by sects. 16—23, inclusive, of the Finance Act, 1920, and by sect. 32 of the Act of 1918, are confined to "individuals," certain classes even of individuals being excepted, see sect. 24 of the Act of 1920, *infra*, p. 471.

(*s*) General Rules, r. 1, *infra*, p. 451; see also Sched. A, No. III. r. 4, *infra*, p. 411, and Sched. D, Misc. Rules, r. 1, *infra*, p. 444, which cover parts of the same ground.

(*t*) Sect. 237, *infra*, p. 406; exemptions, &c. for charitable bodies, colleges, and so on are considered in Chap. XIII., *infra*, p. 261.

(*u*) Sect. 106, *infra*, p. 364; there is no definition of "company."

(*x*) Sect. 106 (1); sect. 207, *infra*, p. 399; Fifth Sched. No. XVI. "Fifth," *infra*, p. 461. As to returns, see Chap. XV.

(*y*) General Rules, r. 20, *infra*, p. 455; the same ground is covered as far as No. III. of Sched. A is concerned by rule 5 of No. III., *infra*, p. 411; and in *A.-G.* v. *Ashton Gas Co.*, *infra*, p. 244, one of the contentions which failed was that sect. 54 and No. III. of Sched. A in the Act of 1842 (the predecessors of these rules) provided for distinct matters: *vide supra*, p. 70. The express direction that the corporators are to allow the tax deducted has disappeared from the General Rules, though it is retained in rule 5 of Sched. A, No. III.

It is upon this principle that shareholders in companies and so forth have the income tax upon their dividends deducted against them "at the source" (*z*). The company, in fact, pays the income tax on behalf of the shareholders amongst whom its profits are distributed (*a*), while the shareholders, as the persons beneficially concerned, ultimately bear the burden (*a*).

The word "dividend," however, is not limited to the amount distributed to a shareholder; it is wide enough to include, for instance, the portion of the profits of an assurance company to which the holder of a "participating policy" is entitled, and that portion cannot be deducted as an expense before payment of income tax (*b*). On the other hand, tax can be deducted on payment of that portion to the holder of the policy.

Like an individual, a body or company is also liable to pay on the whole of its profits without distinguishing any yearly interest, annuity or other annual payment that is payable, but is entitled to deduct tax when paying such moneys (*c*).

Payments of Dividends, &c. "Free of Income Tax."

The income tax on the dividends distributed forms part of the profits of the company; it is a proportionate part which the Revenue is entitled to take out of the profits. It is not a deduction before arriving at the profits (*d*). Further, "if the profits, after deducting the income tax,

(*z*) The provisions with regard to deduction of tax against yearly and other interest (as distinguished from dividend of profits) are considered *supra*, pp. 181—184.

(*a*) *A.-G.* v. *Ashton Gas Co.*, [1904] 2 Ch. 621; [1906] A. C. 10; *Mylam* v. *Market Harborough Advertiser Co.*, [1905] 1 K. B. 708; *Brooke* v. *I. R.*, [1918] 1 K. B. 257, *infra*, p. 258, where the reasoning in *Purdie* v. *Rex* was questioned as being apparently inconsistent with the decision in *A.-G.* v. *Ashton Gas Co.*; *Scottish Union, &c.* v. *New Zealand, &c. Land Co.*, [1921] 1 A. C. 172, *infra*, p. 245.

(*b*) *Last* v. *London Assurance Corporation* (1885), 10 A. C. 438, *supra*, p. 144. As to distributions of bonus shares, see *I. R.* v. *Blott*, *infra*, p. 283.

(*c*) General Rules, r. 19 (1), which is discussed at length *supra*, pp. 181—183.

(*d*) See the observations of BUCKLEY, J., in *A.-G.* v. *Ashton Gas Co.*, *supra*, [1904] 2 Ch. at p. 624, which were adopted by the House of Lords.

have subsequently to be distributed among the members of the company, that income tax is not payable again by those members, so far as they receive their share of the profits, because the income tax is to be taken as having been paid out of their profits, and on their behalf" (*e*).

Accordingly, where there is a limit by way of percentage put by statute or otherwise upon the amount that may be distributed to the shareholders (or to shareholders of any particular class, such as preference shareholders), it is not lawful to pay a dividend at the fixed rate per cent. "free of income tax"; such a payment would amount to a payment of that percentage *plus* the income tax thereon (*f*).

Where a company has obtained the relief in respect of Dominion income tax (*g*), it may deduct only the United Kingdom tax as reduced by that relief, even against the holders of a particular class of shares (such as preference shares) who are entitled to a dividend at a fixed rate (*h*).

Again, where a dividend is paid "free of income tax" (whether lawfully or not) the income tax paid thereon by the company, as well as the dividend received, forms part of the income of the shareholder for the purpose of super-tax (*i*), and for the purpose of calculating any allowance or deduction which depends on total income (*k*).

Upon the principles above indicated, it has been decided that where the manager of a company was entitled by his agreement to be paid a percentage on the "net sum available for dividends," that net sum included the

(*e*) *Ibid.*, per ROMER, L.J., at p. 629.

(*f*) *A.-G.* v. *Ashton Gas Co.*, *supra*. Many gas companies' and other special Acts impose a limit of dividends comparable to that which was in question in the *Ashton case*.

(*g*) *Vide supra*, p. 29.

(*h*) *Scottish Union, &c.* v. *New Zealand, &c.*, *supra*, p. 244, is rendered inapplicable by sect. 27 (5) of the Act of 1918.

(*i*) *Samuel* v. *I. R.*, [1918] 2 K. B. 553, *infra*, p. 283.

(*k*) Income for super-tax is calculated (speaking generally) in the same way as income for this purpose: sect. 5 (1), *infra*, p. 278; *vide supra*, p. 22.

amount payable as income tax by the company, and deductible in paying dividends (*l*).

Partnerships.

Where a trade or profession (the profits of which are assessable under Case I. or Case II. of Schedule D) is carried on by two or more persons jointly, the assessment of the profits is made in the partnership name separately from any other assessment to which any one of the partners is liable; it makes no difference that any of the partners is a "sleeping partner" (*m*). Thus, where a trading ship belongs to part-owners, a single and distinct assessment is made upon them in respect of the profits of that ship, although the greater part of the shares is owned by one of the part-owners, who manages, and, in fact, controls the trade of the ship, and although he is also the owner or part-owner of another ship (*n*); the profits of the other ship will form the subject of a separate assessment (*o*). A separate assessment must always be made for a separate partnership unless the partners are the same people; and separate assessments for different partnerships in different places are specifically provided for (*o*).

Returns of the partnership income have to be made by the "precedent acting partner," that is, the first person named in the partnership agreement, or (if there be no agreement) in the usual name of the firm, who is an acting partner; if none of the partners resides in this country, the returns are to be made by the resident agent, manager or factor. The Commissioners may also require returns from every partner (*p*).

(*l*) *Johnston* v. *Chestergate Hat Manufacturing Co.*, [1915] 2 Ch. 338; for this purpose the excess profits duty and the income tax are not in the same position, and accordingly *Patent Castings Syndicate, Ltd.* v. *Etherington*, [1919] 2 Ch. 254, and the cases bearing on the former duty which are there reviewed are not in point.

(*m*) Sched. D, Cases I. and II. r. 10, *infra*, p. 438.

(*n*) *A.-G.* v. *Borrodaile* (1814), 1 Price, 148; *Farrell* v. *Sunderland S.S. Co., Ltd.* (1903), 4 Tax C. 605, *supra*, p. 107.

(*o*) Cases I. and II. r. 16, proviso, *infra*, p. 440.

(*p*) Rule 10 (2), (3), (4); the assessment of non-resident persons is provided

If the control or management of the partnership's trade is situate abroad, then the trade is deemed to be carried on by persons resident outside the United Kingdom, although some of the partners reside in this country and some of the trading operations are conducted in this country; but the partnership is assessable in respect of the profits of those operations to the same extent as, and to no greater extent than, if it were an individual resident abroad; and if any assessment can be made, it may be made in the name of any resident partner (*q*).

Partnership does not defeat the right of a partner to claim any allowance or deduction (*r*), to claim an adjustment on account of loss in a trade or profession (*s*), or to claim a set-off against his profits of the partnership in respect of the loss made in a distinct trade (*t*). In any claim for allowance or deduction the partner's income is deemed to be the share to which he is entitled during the year to which his claim relates of the partnership profits as estimated for income tax purposes (*u*); and not the actual share of profits received by him for that year (*x*).

Effect of Residence in the United Kingdom.

The question whether a person is "residing" or "resident" or "ordinarily resident" in the United Kingdom may be of importance for various purposes. For instance, with certain exceptions, a person not resident in this country cannot obtain any allowance in respect of earned

for by General Rules, *vide infra*, p. 253, and their mention here is superfluous. As to returns, see Chap. XVIII.

(*q*) Sched. D, Cases I. and II., r. 12 (1), (2), *infra*, p. 439. As to the extent to which the trading operations of an individual resident abroad—and therefore of such a partnership as is here described—are amenable to the tax, see observations on "Trade exercised by a resident person on behalf of a non-resident," and on the course of business between them, *supra*, pp. 124—129, and especially *Sulley* v. *A.-G.*, *supra*, p. 124.

(*r*) Sect. 20, *infra*, p. 343. See Chap. I.

(*s*) Sect. 34, *infra*, p. 351; *vide infra*, p. 323.

(*t*) Sched. D, Cases I. and II., r. 13, *infra*, p. 440; *vide supra*, p. 173.

(*u*) Sect. 20, proviso (ii), *infra*, p. 344.

(*x*) *Gaunt* v. *I. R.*, [1913] 3 K. B. 395, *infra*, p. 281; and see per ROWLATT, J., in *I. R.* v. *Blott*, [1920] 1 K. B. 114, at p. 131, *infra*, p. 283.

income or deduction from assessable income, or reduction of rate or relief in respect of insurance premiums (*y*). A person "residing" in the United Kingdom is liable to tax in respect of profits from any kind of property and of the profits of a trade, &c. carried on by him in this country or elsewhere (*z*); in regard to some "foreign possessions" he is taxable on the profits only so far as they are received in this country (*a*), but in respect of foreign securities, stocks, shares and rents, the extent to which he is to be charged may depend on whether he is or is not "ordinarily resident in the United Kingdom" (*a*). A person "who is in the United Kingdom for a temporary purpose only, and not with any view or intent of establishing his residence therein," and has not resided here for six months in any year, is not taxable in respect of any foreign possessions or securities (*b*). Provisions for the assessment of non-resident persons through resident agents, trustees and so on apply to almost all forms of the tax (*c*) And a person whose ordinary residence is in the United Kingdom does not escape liability because he has left the country for the purpose only of occasional residence abroad (*d*).

Meaning of "Residence."

The question of residence with regard to companies and partnerships has been dealt with in connection with the assessment of the profits of the trade, to which it is primarily relevant (*e*). The meaning of the word with regard to individuals will now be considered.

A man can have two residences at the same time,

(*y*) Finance Act, 1920, s. 24, *infra*, p. 471; see Chap. I.

(*z*) Sched. D, r. (1)' (a) (i) (ii), and Cases I. and II.; see *Colquhoun* v. *Brooks*, *supra*, p. 114.

(*a*) Sched. D, Cases IV. and V.; see Chap. IX., *supra*, p. 211. The phrase "ordinarily resident" occurs also in connection with the place of charge, *vide infra*, p. 299.

(*b*) Sched. D, Misc. Rules, r. 2, *infra*, p. 444; *vide infra*, p. 251.

(*c*) See, *e.g.*, sect. 101, and General Rules, 4—14, *supra*, pp. 122 *sqq.*, and *infra*, pp. 252 *sqq.*

(*d*) General Rules, r. 3, *infra*, p. 451; *vide infra*, p. 250.

(*e*) *Supra*, pp. 112 *sqq.*

although he cannot have two domiciles; and there is nothing in any of the material provisions which points to the "principal residence" as the governing fact. A place of residence is a place "to which it is quite easy for the person to resort as his dwelling-place whenever he thinks fit, and to set himself down there with his family and establishment . . . if he occupies that place of residence for a portion of the year . . . he is residing there in the course of that year" (*f*).

A merchant (*f*), therefore, or the servant of a commercial company (*h*), who lives most part of the year in a foreign country where he exercises his business or employment, but possesses a dwelling-house in the United Kingdom in which he lives each year for some months, is residing in this country (*i*). An American citizen who lives most part of the year in the United States, but leases a lodge and shootings in Scotland, where he lives for two months in each year during the shooting season, is "residing" in the United Kingdom (*k*), and cannot be said to be "in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence therein" (*l*). In that phrase "'temporary' . . . . means that it is casual or transitory residence, as distinguished from a residence, of which there may be more than one, but which may be habitual or permanent" (*l*).

(*f*) *Lloyd* v. *Sulley* (1884), 11 R. 687; 2 Tax C. 37, per Lord President INGLIS. The actual decision in this case is in part overruled by *Colquhoun* v. *Brooks*, *supra*, p. 114; but the principles it lays down with regard to residence have been approved and followed in *I. R.* v. *Cadwalader* (1904), 7 F. 146; 5 Tax C. 101 (where the various decisions are reviewed); *Thomson* v. *Bensted*, [1919] S. C. 8; 7 Tax C. 137.

(*h*) *Thomson* v. *Bensted*, *supra*; where the assessment was under Sched. D; liability under Sched. E may not depend on residence, see *Pickles* v. *Foster*, *supra*, p. 238.

(*i*) For the purposes of Sched. D, Cases I. and II. (see Chap. VI.), *Lloyd* v. *Sulley*, *supra*, as to the amount on which such a merchant is assessable, see, however, *Colquhoun* v. *Brooks*, *supra*, p. 215. Cf. also *A.-G.* v. *Coote* (1817), 4 Price, 183.

(*k*) For purposes of Sched. D, see Chaps. VI. and IX.

(*l*) See now Sched. D, Misc. r. 2, *infra*, p. 444; *I. R.* v. *Cadwalader*, *supra*; see per Lord MCLAREN, 5 Tax C., at p. 109.

In the case (*m*) of a merchant carrying on business in India, who in most years spent several months with his wife and family in the United Kingdom and in a house possessed by his wife, but who had lived for the whole year of assessment at his usual residence in India, the decision that he was not "residing" in the United Kingdom appears to conflict with the principles laid down in *Lloyd* v. *Sulley* and to be of doubtful authority (*n*).

A sea captain having a house in Scotland where his wife and children live is "residing" in the United Kingdom, and not for a temporary purpose only (*o*), and he is "residing" even though he has been absent from the United Kingdom throughout the year of assessment (*p*).

Residence need not necessarily be in a fixed structure; and an American citizen who had lived for twenty years on a yacht anchored within a few hundred yards of the English shore was held to have been properly assessed under Schedule D as a person residing in the United Kingdom (*q*). A person who merely stays from time to time as a guest in another person's house in this country can probably not be said to reside in the United Kingdom (*r*).

Temporary presence in the United Kingdom or absence therefrom.

A person who has a residence in the United Kingdom has already been seen to be liable to income tax charged under Schedule D though he is only in this country for a small portion of the year (*s*), and although he has been

(*m*) *Turnbull* v. *Foster* (1904), 7 F. 1; 6 Tax C. 206.

(*n*) See per Lord DUNDAS in *Thomson* v. *Bensted, supra*, p. 249.

(*o*) *In re Young* (1875), 2 R. 925; 1 Tax C. 57. See now Sched. D, Misc. Rules, r. 2, *infra*, p. 444; *I. R.* v. *Cadwalader, supra*, p. 249; see per Lord MCLAREN, 5 Tax C. at p. 109.

(*p*) *Rogers* v. *I. R.* (1879), 6 R. 1109; 1 Tax C. 225; if the decision in *Turnbull* v. *Foster, supra*, is right, then this case was wrongly decided.

(*q*) *Bayard Brown* v. *Burt* (1911), 5 Tax C. 667.

(*r*) See *R.* v. *Kensington Commrs., Ex parte Polignac*, [1917] 1 K. B. 486, *infra*, p. 314.

(*s*) *Lloyd* v. *Sulley; I. R.* v. *Cadwalader; Thomson* v. *Bensted, In re Young, supra.*

absent for the whole year (*t*); but a person who "is" in the United Kingdom for some temporary purpose only, and not with any view or intent to establish his residence therein, is liable to tax on profits of foreign possessions or securities (*u*) if he "resides" in the United Kingdom for an aggregate of six months in the year whether in one visit or in several visits (*x*).

On the other hand, a British subject whose ordinary residence has been in the United Kingdom purports to be made liable to tax upon the whole of his income (from whatever source derived) although he leaves the United Kingdom for the purpose only of occasional residence abroad (*y*); except in the case of income derived from an office or employment of profit to which Schedule E does not apply (*z*). The emphasis here seems to be upon "ordinary" residence, and the rule must be read subject to the decision in *Colquhoun* v. *Brooks* (*a*) and the general principles enunciated in that case. Otherwise a British subject, who never leaves this country during the year, would under that decision be taxable only on that portion of the profits of a foreign business which is received by him in this country; while another, who is resident here but has spent two or three months in the year out of the country, would be taxable under this rule on the whole of those profits. The rule is believed in practice to be a dead letter, at any rate so far as any sums not received in this country are concerned (*b*). The only real purpose it serves is to show (if it be necessary to do so) that the occasional absence of a resident does not defeat any liability to tax.

(*t*) *Rogers* v. *I. R.*, *supra*, p. 250; see, however, *Turnbull* v. *Foster* and remarks thereon, *supra*, p. 250.

(*u*) See Chap. IX.

(*x*) Sched. D, Misc. Rules, r. 2, *infra*, p. 444. The word "resides" is obviously used in a different sense from that of "residence" in the earlier part of the rule, and corresponds with "is" in that part.

(*y*) General Rules, r. 3, *infra*, p. 451.

(*z*) See *Pickles* v. *Foster*, [1913] 1 K. B. 174. The rule alludes to an exception contained "herein" with regard to an allowance, annuity or stipend; but no such exception is to be found in the Act.

(*a*) *Supra*, p. 215.

(*b*) *Vide supra*, pp. 215—217.

Trustees and Agents chargeable for Beneficiaries and Principals.

Provision is made in a number of rules (*c*) for the assessment and charging of tax due from persons who possess sources of income but who for various reasons cannot make returns or cannot be assessed in the names of persons who act for them in one capacity or another. It is important to note that these rules are merely administrative provisions, and do not impose any substantive liability to the tax; nor do they enlarge or restrict any such liability (*d*). "They really are machinery for enabling the Crown, in common cases, to get the income tax which is properly payable" (*e*). Moreover, "this section (*f*) is a collecting section and not a taxing section, and there is no reason in principle why it should not receive a liberal interpretation" (*g*).

If the Crown can get the income tax from the person primarily liable, the mere fact that he belongs to a class of persons on behalf of whom a trustee or agent is usually assessed does not free him from liability (*h*).

Income of Infants and other Incapacitated Persons.

The income of any "incapacitated person" (a term which means "any infant, married woman, lunatic, idiot or insane person" (*i*)), if he is himself incapable of making a return or cannot be assessed, is to be assessed and charged in the names of the trustee, guardian, tutor, curator or committee having the control of his property, whether the incapacitated person resides in the United Kingdom or

(*c*) General Rules, rr. 4—15, *infra*, p. 452; s. 101, *infra*, p. 362.

(*d*) *R.* v. *Newmarket Commrs., Ex parte Huxley*, [1916] 1 K. B. 788; *Drummond* v. *Collins*, [1915] A. C. 1011, *supra*, p. 212.

(*e*) *Ex parte Huxley*, per COZENS-HARDY, M.R., at p. 797.

(*f*) Sect. 41 of the Act of 1842, the precursor of rules 4, 5, and 13 of the General Rules in the Act of 1918.

(*g*) Per Lord PARKER in *Drummond* v. *Collins*, at p. 1019.

(*h*) *Ex parte Huxley*, *supra*; *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89; *supra*, p. 123.

(*i*) See definition in sect. 237, *infra*, p. 407.

(*k*) General Rules, rr. 4, 5; when 5 says the assessment is to be "to the like amount" as if "such non-resident person . . . were resident," it is not in all cases to be read literally. If it were, then, for instance, a non-resident

not (*k*). But there are separate provisions as to married women (*l*). The person so chargeable is answerable for all matters to be done with regard to assessment and payment of tax (*m*) and is to deliver statements of profits (*n*); he may retain sufficient to pay the tax out of money coming into his hands, and is indemnified for all such payments made in pursuance of the Act (*o*).

An infant who earns an income by his own skill is capable of making a return and of paying the tax; if he has no guardian or trustee, he does not thereby escape assessment, but is liable personally (*p*).

In order to make a guardian chargeable on behalf of an infant, it is not necessary that he should have control of the property or concern from which the infant's income is derived, so long as he receives money of the infant; and where remittances were made to this country by trustees residing abroad for the maintenance and education of infants residing here, and were received by their mother and guardian, she was held to be assessable in respect of the sums so received (*q*).

Incomes of Non-Resident Persons Generally.

Persons not resident (other than "incapacitated persons") if they are "carrying on a trade in the United Kingdom" (*r*) are assessable and chargeable in the name of any factor, agent, receiver, branch or manager, whether such

lunatic (being a British subject) would be taxable in respect of foreign possessions and securities on a higher basis than a sane non-resident British subject, or than a subject of a foreign country not domiciled here (see Chap. IX.). All the rule means is that his income shall not bear less tax because he cannot be reached personally. A parent, guardian or tutor is also by sect. 161 (1), *infra*, p. 386, made liable for tax in default of payment by an infant; but the provision adds little to the rules above cited, for it makes the parent, &c. liable only to the extent to which he receives money in the infant's behalf: *Ex parte Huxley*, *supra*, per PHILLIMORE, L.J., [1916] 1 K. B. at p. 801.

(*l*) *Vide infra*, p. 454.

(*m*) Rule 13, *infra*, p. 454.

(*n*) Sect. 101, *vide infra*, p. 362.

(*o*) Rule 14, *infra*, p. 454.

(*p*) *Ex parte Huxley*, *supra*, p. 252; the taxpayer was a successful jockey.

(*q*) *Drummond* v. *Collins*, [1915] A. C. 1011, *supra*, p. 212; see also *Fry* v. *Shiel's Trustees* (1915), S. C. 159; 6 Tax C. 583; *supra*, p. 16.

(*r*) The meaning of this phrase is discussed at length, *supra*, pp. 111 *sqq*.

factor, &c. has receipt of the profits or gains or not (*s*); all profits or gains arising directly or indirectly through such factorship, &c. are to be included in the assessment (*t*). But these two rules do not extend the scope of the tax, and where the trade of the non-resident is not "carried on in the United Kingdom" (*u*), the mere fact that he has what may be described as a "branch" in the United Kingdom is not sufficient to make him taxable on the profits of the trade (*v*).

A special and somewhat drastic provision (*x*) is made for cases where a resident person carries on business with a non-resident (not being a British subject or a British, Indian, Dominion, or Colonial firm or company) and the non-resident substantially controls the resident person so as to reduce the profits of the latter to nothing, or to something less than the ordinary profits which might be expected to arise from that business if it were not controlled; in such a case the resident person is assessable as if he were an agent of the non-resident.

Rule 7 was first enacted as sub-sect. (3) of sect. 31 of the Finance (No. 2) Act, 1915 (*y*), and that sub-section has been held to "introduce a remarkable extension of the scope of the income tax, because it provides that a person in the position [described], although he is not an agent, may nevertheless be charged as if he were an agent," and that he shall be "taxable in respect of a notional business which is not carried on in the United Kingdom" (*z*).

Rules 5 and 6, however, first appeared as sub-sects. (1) and (2) of the same section; and Rowlatt, J., as has already been seen (*a*), was not prepared to hold that the effect

(*s*) General Rules, rr. 5, 6, *infra*, p. 452; as to construction of rule 5 see note (*k*) on p. 252.

(*t*) Rule 6.

(*u*) The meaning of this phrase is discussed at length, *supra*, pp. 111 *sqq*.

(*v*) *Smidth* v. *Greenwood*, [1920] 3 K. B. 275, *supra*, p. 129.

(*x*) Rule 7.

(*y*) 5 & 6 Geo. 5, c. 89.

(*z*) *Gillette Safety Razor, Ltd.* v. *I. R.*, [1920] 3 K. B. 358; see per Rowlatt, J., at pp. 374, 375—the case arose upon excess profits duty.

(*a*) *Smidth* v. *Greenwood*, *supra*.

of sub-sect. (2) was to bring into taxation profits made by non-residents from a trade not exercised in the United Kingdom; "to make an extension in the scheme of taxation of that magnitude and importance the Court is entitled to look for words of clear and direct enactment" (*b*). It is submitted that as far as the income tax is concerned these two decisions are not consistent; that to read sub-sect. (3) of sect. 31 of the Act of 1915 as largely extending the scope of the tax, while sub-sects. (1) and (2) are read as mere provisions for collection, is to introduce a violent break in the continuity of sect. 31 which is not rendered necessary by its language; and that sub-sect. (3) (*c*), with the two following sub-sections, was intended only to set up an effectual machinery for assessment and collection in cases where the non-resident person does in fact carry on a trade in the United Kingdom, but does so (in pursuance of such an arrangement as is there described) by means of a resident person who cannot be described as either a "factor, agent, receiver, branch or manager."

Apart from such an arrangement as is last mentioned, these rules does not apply so as to make a non-resident person chargeable in the name of a broker or general commission agent, or of an agent not being an authorised person carrying on the regular agency of the non-resident, in respect of profits arising from sales or other transactions carried out through such broker or agent (*d*). Nor does any sale or other transaction between two non-resident parties give rise to a liability to assessment in the name of a resident person under these rules (*e*).

The agent or other person chargeable is answerable for all matters with regard to assessment and payment of the tax, and is liable to make returns; he may retain sufficient

(*b*) [1920] 3 K. B. at p. 287.

(*c*) Now rule 7. Rules 8 and 9 are the successors of sub-sects. (4) and (5) of sect. 31; rules 10 and 11 of sub-sects. (6) and (7).

(*d*) Rule 10, *infra*, p. 453.

(*e*) Rule 11.

to pay it out of money coming into his hands, and is indemnified to that extent (*f*).

Where the Commissioners consider that the true amount of the profits of the non-resident cannot readily be ascertained, they may decide to assess the non-resident person on a percentage of the turnover (*g*), and the resident person may be required to furnish returns of the business done through him or with him by the non-resident person (*h*); and either the resident or the non-resident may require the question of the percentage to be referred to a referee (*i*).

Where the non-resident person is a manufacturer or producer of foreign goods or produce, and is assessed in the name of a branch, manager, agent, factor, or receiver, the person in whose name the assessment is made may apply to have the profits of manufacture or production eliminated, so that the assessment will be reduced to the amount of the profits which a merchant or retailer would have made (*k*).

The whole of the above rules must be read subject to the general principle (*l*), that if the non-resident person can himself be reached by the Inland Revenue authorities, they may require him to make returns and to pay the tax; the rules do not relieve the non-resident of any liability. Thus, where a partner in a foreign firm of wine-merchants spent a part of every year in England, and was directly assessed, he failed to upset the assessment on the ground that it ought to have been made upon his agents in England and not upon himself (*m*).

A partnership, the control and management of whose trade is situate abroad, is assessable in the name of any

(*f*) Rules 13, 14, and s. 101.

(*g*) Rule 8; *vide supra*, p. 124.

(*h*) Rule 8.

(*i*) Rule 9 (2); as to appeals in cases of this kind, *vide infra*, p. 326.

(*k*) Rule 12; the rule shows the manner of making such application.

(*l*) *Vide supra*, p. 252.

(*m*) *Tischler* v. *Apthorpe* (1885), 2 Tax C. 89, *supra*, pp. 123, 126. It was not necessary for the purpose of this decision to establish that the partner's stay in England constituted residence in the United Kingdom; for he was held to be carrying on a trade in this country.

partner resident in the United Kingdom, upon the profits of any trade carried on by it in this country (*n*).

Receivers.

A receiver appointed by any Court in the United Kingdom which has the direction or control of any property charged with the tax is liable to make returns, to be assessed, and to pay tax as if the property were free from such direction and control (*o*).

Married Women.

"Married women" are included in the definition of "incapacitated persons" (*p*); but the rules (*q*) with regard to the assessment of such persons generally are very substantially modified as regards married women. Apart from any special application, where a married woman is living with her husband, her profits (of all kinds) are deemed to be the profits of the husband, and assessed in his name, and not in her own name, or in that of her trustee (*r*). The rate of tax applicable is calculated upon the joint income; some relief has now been given to meet the grievance thus caused, a deduction of 225*l.* being made in ascertaining the taxable income together with a limited deduction if the wife has an earned income (*s*).

A married woman, not living with her husband, who acts as a sole trader, or is entitled to any property or

(*n*) *Vide supra*, p. 246.

(*o*) General Rules, r. 15, *infra*, p. 454. The question of priority in bankruptcy and winding-up is dealt with in connection with "Collection," *infra*, pp. 333—335.

(*p*) Sect. 237, *infra*, p. 407.

(*q*) *Supra*, p. 252.

(*r*) General Rules, r. 16, proviso (1), *infra*, p. 454; *Bowers* v. *Harding*, [1891] 1 Q. B. 560, *supra*, p. 238. ROWLATT, J., in *Purdie* v. *Rex*, [1914] 3 K. B. 112, *infra*, at p. 117, points out the danger of treating this proviso as if it were "a substantive enactment"; but as it is the sole foundation for the practice of aggregating the incomes of a husband and wife, which brings in a great sum to the State every year, the writer has ventured so to treat it.

(*s*) Finance Act, 1920, s. 18; see Chap. I.

profits for her separate use, is assessable in her own name as if she were not married (*t*). If, however, she lives in the United Kingdom, and receives from her husband or through him, or from his property, or on his credit, any allowance or remittance from property outside the United Kingdom, she is to be assessed in respect of that allowance or remittance as agent of her husband (*u*).

Where the married woman is living with her husband, the right to deduct tax against a payment of dividend by a company, and, it is submitted, against any other payment against which tax is deductible (*x*), applies in her case (*y*) exactly as it does in that of any other person (including a married woman living separately).

A husband or wife may claim to be assessed separately (*z*); but as a separate assessment does not in general entitle either of the parties to be assessed at a lower rate, or to enjoy any other deduction, allowance or reduction of rate than if they are assessed together (*a*), this privilege is of little value except for convenience in accounting and so forth.

The application for a separate assessment for any year must be made within six months before 6th July in that year (*b*); returns for the purpose may, however, be required at any time (*c*). In such a case, claims for allowances and deductions and for relief as to insurance premiums (*d*) may be made as if the parties were not married (*e*); but the

(*t*) Rule 16, substantive part read with proviso (1).

(*u*) Rule 16, proviso (2); the rest of this proviso seems to add little to the substantive part of the rule, unless indeed a "temporary" absence of the husband allows a wife (even where there is no intention of permanent separation) to claim a separate assessment for allowances and for remittances from property outside the United Kingdom to which she is entitled in her own right.

(*x*) As to deduction at the source generally, *vide supra*, pp. 56, 59, 181 *sqq*.

(*y*) *Purdie* v. *Rex*, [1914] 3 K. B. 112; the reasoning in this case has been questioned, but the actual decision holds good, see per SCRUTTON, L.J., in *Brooke* v. *I. R.*, [1918] 1 K. B. at p. 270.

(*z*) General Rules, r. 17, *infra*, p. 454. A similar claim, with a similar effect, may be made with regard to super-tax: *vide infra*, p. 284.

(*a*) Finance Act, 1920, s. 25 (1) (b), (c), *infra*, p. 472; see Chap. I.

(*b*) General Rules, r. 17 (1), *infra*, p. 454.

(*c*) Rule 17 (2); Act of 1920, s. 25 (1) (d), (2).

(*d*) See Chap. I.

(*e*) Act of 1920, s. 25 (1) (a).

result will merely be to distribute the amount of the allowance, &c. between husband and wife; and the total amount allowed or repaid is not to exceed what it would have been if no such application had been made (*f*); relief for life assurance and deferred annuity payments (*g*) is credited to the party who made them (*f*).

Marriage does not defeat the right to relief in respect of earned income (*h*), but the earned incomes of husband and wife living together are aggregated for the purpose of ascertaining the amount of that deduction (*i*); an additional deduction is, however, made of nine-tenths of the wife's earned income up to a maximum of 45*l*. (*k*).

Death.

An executor or administrator of a deceased person is liable for the tax charged on the deceased (*l*), and may deduct all payments of tax out of the assets and effects of the deceased (*m*); it may be doubted whether the liability extends beyond the amount of those assets and effects (*n*). In addition to this general rule, specific cases arising upon death are provided for as follows:—

Where an owner of lands, &c. who was himself in occupation at the time when an assessment under Schedule A (*o*) was made dies before payment of the tax, the heirs, executors, administrators, assigns or other persons who became entitled at the death become liable for arrears and for the current tax calculated to the time of death, and thereafter to the end of the year without any new assess-

(*f*) Act of 1920, s. 25 (1) (b), (c).

(*g*) *Vide supra*, pp. 18 *sqq*.

(*h*) Act of 1918, s. 14 (4), *vide supra*, p. 16.

(*i*) Allowed by Act of 1920, s. 16.

(*k*) Sect. 18 (2).

(*l*) Sect. 161 (1), *infra*, p. 386; see also as to "Collection" and "Recovery," *infra*, p. 330.

(*m*) Sect. 161 (2).

(*n*) Cf. the observations of PHILLIMORE, L.J., in *Ex parte Huxley*, referred to *supra*, p. 253. The question of priority in the case of an insolvent estate is one of collection, and is dealt with *infra*, p. 333.

(*o*) See Chap. II., especially p. 54.

ment (*o*). The tax due under Schedule A from an occupier at the time of assessment who was not an owner (*p*) and that due under Schedule B (*q*) are not dealt with in this subsection, and are therefore due from executors and administrators only. Any dispute between the executors of a former occupier and his successor in occupation as to the proportion due from each is to be settled by the General Commissioners (*r*).

In regard to profits assessed to tax under Schedule D (*s*), the executors and administrators may, within three months after the end of the year of assessment, apply to the General Commissioners to have it amended or vacated; the Commissioners are to do so and to direct repayment if necessary (*s*); this rule is, however, modified in the case of a trade or profession to which there is a successor (*t*).

Where the deceased held a public office or employment taxable under Schedule E, his executors and administrators are liable for the tax in respect of the portion of the year during which he held or exercised the office or employment (*u*).

If a statement of all the profits (chargeable under whatever Schedule) has not been made before the death, an assessment may be made upon the executors or administrators in respect of all the profits which arose or accrued to the deceased before his death (*x*), except, of course, profits taxed at the source by way of deduction (*y*). Such an assessment may be made at any time within the year of assessment or within three years thereafter; and the tax assessed is payable out of the estate (*x*).

(*o*) Sect. 161 (3).
(*p*) See Chap. II., especially p. 54.
(*q*) See Chap. IV.
(*r*) General Rules, r. 22, *vide supra*, p. 455.
(*s*) Sched. D, Misc. Rules, r. 3 (1), (2), *infra*, p. 444.
(*t*) Rule 3 (3), and Sched. D, Cases I. and II. r. 11, *vide infra*, p. 439. and see p. 168.
(*u*) Sched. E, r. 2, *infra*, p. 447; *vide supra*, p. 239
(*x*) General Rules, r. 18, *infra*, p. 455.
(*y*) To assess the executors separately on such profits would be to tax these twice over.

CHAPTER XIII.

EXEMPTIONS AND ABATEMENTS IN FAVOUR OF PARTICULAR BODIES AND INSTITUTIONS.

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Trustees for Charitable Purposes.

CERTAIN exemptions and allowances are provided in favour of trustees for charitable purposes and of public institutions of various kinds. Before dealing with those exemptions and allowances (which vary both in the matters to which they are applied and in the procedure for obtaining them), it will be convenient to consider the nature of the bodies and persons who are entitled to them.

"Trustees for charitable purposes" are entitled to certain privileges of this kind with respect to tax charged under Schedules A, C and D (*a*). The expression, "charitable purposes" (*b*) bears the same meaning in the Income Tax Acts as in the general law of England, and is not restricted to its ordinary or colloquial sense (*c*). It bears that meaning in regard to all the exemptions and allowances under Schedule A as well as in regard to those under Schedules C and D (*d*).

(*a*) *Vide infra*, pp. 266—270.

(*b*) It is used in sect. 37, *infra*, p. 352, in various contexts, but always in the same sense.

(*c*) *Special Commrs.* v. *Pemsel*, [1891] A. C. 531. Cf. also *I. R.* v. *Scott*, [1892] 2 Q. B. 152.

(*d*) *R.* v. *Special Commrs.*, *Ex parte University College of North Wales* (1909), 5 Tax C. 408.

"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity must do either directly or indirectly" (*f*).

Accordingly, trustees for purposes of maintaining the missionary establishments among the heathen nations of the Moravian Church (*g*), and a University College (*h*), have been held to be "trustees for charitable purposes," and to be a "body of persons established for charitable purposes only," within the meaning of the Income Tax Acts, and have obtained exemption. A company not trading for profit, one of whose objects was to provide accommodation for, and to promote the objects of, two religious and educational associations was admitted for the purposes of that case to be such a body, and each of the two associations was held to be such a body; but the company for other reasons failed in their claim to exemption (*i*). The question whether overseers of the poor are trustees for charitable purposes has been raised but not decided (*k*).

Where a testator bequeaths the residue of his personalty to trustees for or to a body of persons established for charitable purposes, and the executors under the will receive the income thereof pending the final ascertainment and distribution of the residue, the property does not become that of the charitable trustees or body until the residue is distributed to them; the executors do not stand

(*f*) Per Lord MACNAGHTEN in *Pemsel's case*, [1891] A. C. at p. 583.

(*g*) *Special Commrs.* v. *Pemsel*, *supra*.

(*h*) *Ex parte University College of North Wales*, *supra*, p. 261. It will be seen, *infra*, p. 269, note (*l*), that the University College succeeded in being treated not only as a "college," but also as "trustees, &c."

(*i*) *R.* v. *Special Commrs.*, *Ex parte Essex Hall*, [1911] 2 K. B. 434, *infra*, p. 268.

(*k*) *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381, *infra*, p. 269.

in the place of the charitable trustees or body during the interval between the death and the distribution (*l*).

College or Hall.

The authority (*m*), as such, of any college in any university of the United Kingdom or of any hall in such university (*n*) is entitled to allowances in respect of the public buildings and offices belonging to it (*o*). The College of Preceptors is not in any university nor can it be said, although it confers diplomas and degrees, to constitute a university in itself; it is therefore not entitled to these allowances (*n*).

Hospital.

A "hospital," that is to say, a "hospital authority" (*p*), is entitled to certain exemptions and allowances under Schedule A (*q*). The "hospital" must have an eleemosynary character, and the word has been held not to apply where the institution was wholly self-supporting, and indeed derived a large annual surplus from payments made by patients, even though that surplus was devoted to the improvement of the institution (*r*). The word "hospital" as here used does, however, apply to an institution which has a substantial endowment, although it also receives payments from patients who are in a position to make them (*s*). It so happens that in each of these cases, the

(*l*) *R.* v. *Special Commrs., Ex parte Dr. Barnardo's Homes,* [1920] 1 K. B. 468.

(*m*) Per BUCKLEY, L.J., in *Ex parte Essex Hall,* [1911] 2 K. B. at p. 440.

(*n*) The phrase "in any university . . ." qualifies both "college" and "hall": *College of Preceptors* v. *Jenkins* (1919), 7 Tax C. 162; see also *Bain* v. *Free Church of Scotland, infra,* p. 265.

(*o*) Sched. A, No. VI. r. 1 (a), (b), *infra,* p. 418.

(*p*) Per BUCKLEY, L.J., in *Ex parte Essex Hall,* [1911] 2 K. B. at p. 440.

(*q*) Sect. 37 (1) (a), *infra,* p. 352; Sched. A, No. VI. r. 1 (c), (d), *infra,* p. 418.

(*r*) *Needham* v. *Bowers* (1888), 21 Q. B. D. 436; cf. *St. Andrew's Hospital* v. *Shearsmith* (1887), 19 Q. B. D. 624, *infra,* p. 270. The object to which profits are devoted is, speaking generally, immaterial for income tax purposes, see *Mersey Docks* v. *Lucas, supra,* p. 137.

(*s*) *Cawse* v. *Nottingham Lunatic Hospital,* [1891] 1 Q. B. 585. Hospitals also enjoy an exemption from inhabited house duty under the House Tax Act,

institution was one for the reception and treatment of lunatics (*t*).

Public School.

A "public school" (which appears with "hospital" and is entitled to the same exemptions and allowances (*u*)), must also have some eleemosynary character; but if it has a substantial endowment, it is none the less a public school because it is partly maintained by fees (*x*). The following passage is usually regarded as stating the law on the subject:—

"It would be unwise to endeavour to lay down any definition in the sense of saying what would or would not be a public school in all cases; but I think that the school in this case has certain characteristics which denote a public school. It has a perpetual foundation: a portion of its income is derived from charity: it is managed by a public body: no private person has any interest in the school: no profit was or is in the contemplation of its founders or managers: and lastly, the object of the school is the benefit of a large class of persons" (*y*).

But a school which had all those characteristics (except possibly the last) was nevertheless held not to be a public school because it was the intention of its founders (the Society of Friends) to establish a school for the education of members of the Society or of children connected with it, and (if there was room for them) of children specially selected. The school was not meant to follow the lines which the ordinary public follow in the matter of schools; but to

1803 (48 Geo. 3, c. 55); Sched. B, Exemptions, Case IV.; the word there bears the same meaning as it does here.

(*t*) See also the observations of Channell, J., in *Mary Clark Home* v. *Anderson*, *infra*, p. 265, [1904] 2 K. B. at pp. 652—4.

(*u*) Sect. 37 (1) (a), *infra*, p. 352; Sched. A, No. VI. r. 1 (c), (d).

(*x*) *Blake* v. *Mayor, &c. of London* (1887), 18 Q. B. D. 437; 19 Q. B. D. 79; the cases decided with regard to inhabited house duty have no bearing here, for the expression in the House Tax Act, 1808, is "charity school."

(*y*) *Ibid.*, per FRY, L.J., 19 Q. B. D. at p. 82; the "large class of persons" in that case was "the sons of persons engaged in professional, commercial and trading pursuits."

possess a particular atmosphere identified with the Society of Friends; and the school adhered to those intentions (*z*).

The ground of that decision was not that the religious teaching or the objects of the school were "denominational"; and a school primarily intended for Roman Catholic children (though not by its trusts confined to them) at which the religious teaching was Roman Catholic was held nevertheless to be a public school; the school had not long been established and was still small in size; but it was endowed with permanent buildings and a portion of its current expenses was defrayed out of trust funds; and it possessed the other characteristics above indicated (*a*).

An institution for the training of candidates for the ministry after completing a university course is not a public school (*b*).

Almshouse.

An "almshouse" authority as such is entitled to the same exemptions as the authority of a "hospital" or "public school" (*c*). The principles of the decisions as to lunatic hospitals (*d*) apply to the interpretation of the word "almshouse" (*e*); and where an institution is not self-supporting, but its entire annual value is devoted to assisting the inmates, the institution may be an "almshouse," although the inmates are not without means, and have to provide their own food, clothing, &c. (*e*). In that case the inmates made no payments, but it is submitted that even if they did it would make no difference, always provided that the institution was not wholly self-supporting (*f*).

(*z*) *Ackworth School (Governors)* v. *Betts* (1915), 6 Tax C. 642.

(*a*) *Cardinal Vaughan Memorial School* v. *Ryall* (1920), 36 T. L. R. 694; both these cases were decided by ROWLATT, J. In the last, and in *Blake* v. *Mayor of London*, *supra*, p. 264, the school was a day school.

(*b*) *Bain* v. *Free Church of Scotland* (1897), 3 Tax C. 537.

(*c*) Sect. 37, *infra*, p. 352; Sched. A, No. VI. r. 1 (c) (d).

(*d*) *Vide supra*, p. 263.

(*e*) *Mary Clark Home (Trustees)* v. *Anderson*, [1904] 2 K. B. 645.

(*f*) Cf. *Cawse* v. *Nottingham Lunatic Hospital*, *supra*, p. 263; *Blake* v. *London (Mayor)*, *supra*, p. 264.

Literary and Scientific Institutions.

Any literary or scientific institution, as such, is entitled to an allowance under Schedule A in respect of certain buildings "being the property of" such an institution (*g*). The word "property" does not import legal ownership; a building which is appropriated to the purpose of a literary institution, is devoted exclusively to that use, and is incapable of being legally applied to any other purpose is "the property of a literary institution" within the meaning of the rule (*h*); "it is the character of the institution, not the circumstances of its origin, or the means by which it may be established or supported, that will give rise to a claim for exemption" (*i*). Accordingly, a municipal corporation is entitled to the exemption in respect of free public libraries supported out of the rates (*h*). But the building must be used solely for the purposes of the institution, and if it also houses a subscription library the exemption is defeated (*k*).

Literature or science must, however, be the main and leading object of the institution; if on the contrary that object is the advancement of professional interests, the promotion of literature or science being merely incidental or consequential, it is not entitled to the exemption (*l*).

"Allowances" under Schedule A.

The "allowances" made under Schedule A in favour of colleges, halls, hospitals, public schools, or almshouses, are

(*g*) Sched. A, No. VI. r. 1 (e), *infra*, p. 419; as to the description of the buildings affected, *vide infra*, p. 267.

(*h*) *Manchester (Mayor, &c. of)* v. *McAdam*, [1896] A. C. 500; see per Lord HERSCHELL at p. 509.

(*i*) *Ibid.*, per Lord MACNAGHTEN, at p. 511.

(*k*) *Musgrave* v. *Dundee Magistrates* (1897), 3 Tax C. 552.

(*l*) *Sulley* v. *Royal College of Surgeons, Edinburgh* (1892), 19 R. 751; 3 Tax C. 173; *Farmer* v. *Juridical Soc. of Edinburgh* (1914), S. C. 731; 6 Tax C. 467. A similar principle has been applied with regard to corporation duty under the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11, in *Soc. of Writers to the Signet* v. *I. R.* (1886), 14 R. 34; 2 Tax C. 257; *In re Royal College of Surgeons of England*, [1899] 1 Q. B. 871; and, upon an opposite state of facts, in *I. R.* v. *Forrest* (*The Institution of Civil Engineers*) (1890), 15 A. C. 334. See also the cases under the Scientific Societies Act, 1843, collected in Ryde on Rating.

a remission of the tax charged on their public buildings and offices (subject to a certain restriction indicated below), and an allowance of the amount expended on repairs of their public buildings and offices (without that restriction) and of gardens, walks and grounds repaired and maintained out of their funds.

In the case of colleges and halls, the tax on any portion of the public buildings and offices occupied by any individual member thereof, or by any person paying rent, and in the case of hospitals, public schools and almshouses, the tax on any portion occupied by any individual officer or the master thereof, whose total annual income for income tax purposes is 150*l.* or more, is not remitted. In the former case, the gardens, walks and grounds must be for recreation only; in the latter, for recreation or sustenance (*m*).

A hospital authority may, nevertheless, be liable under Schedule D in respect of the profits of a trade carried on upon the hospital premises (*n*).

In regard to literary and scientific institutions, there is a remission of the tax charged on any building being the property of such an institution, and used solely for its purposes, in which no payment is made or demanded for any instruction there afforded by lectures or otherwise, and as far as not occupied by an officer of the institution or by any person paying rent for the same (*o*).

It is doubtful whether a person who is bound by the terms of his employment to reside in a portion of any such building as is referred to in the above rules "occupies" that portion within the meaning of those rules (*p*). Where a person resides in any portion rent-free, the annual value

(*m*) Sched. A, No. VI. r. 1 (a)—(d), *infra*, p. 418.

(*n*) *Coman* v. *Rotunda Hospital*, [1921] 1 A. C. 1, *supra*, p. 109.

(*o*) No. VI. r. 1 (e); see *Musgrave* v. *Dundee Magistrates*, *supra*, p. 266.

(*p*) Cf. *Bent* v. *Roberts* (1877), 3 Ex. D. 66, *supra*, p. 37. The point is dealt with to some extent in *Bray* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484, *supra*, p. 38; see per POLLOCK, B., at p. 488. But it is difficult to reconcile this passage with the Crown's contention that the justices were in occupation of the whole building, and with the admissions set out in 2 Tax C. at p. 428.

of that privilege cannot be included in calculating his income for the purposes of the allowance to hospitals, &c. (*q*).

The above "allowances" are granted by the General Commissioners (*r*), and may, therefore, be claimed in making returns, and in appeals against assessments (*s*).

"Exemptions" under Schedule A.

Exemption from tax under Schedule A in respect of rents and profits of lands not occupied by them is enjoyed by (i.) hospitals, public schools and almshouses, and by (ii.) trustees for charitable purposes, so far as the rents and profits are applied to charitable purposes only (*t*). As has been seen, colleges or halls in universities, hospitals, public schools and almshouses are entitled to certain allowances in respect of premises which they occupy (*u*); other trustees for charitable purposes are not. The curious consequence follows that such other trustees are liable under Schedule A in respect of premises vested in and occupied by them for the purposes of the trust, though they are exempt in respect of lands which yield them an income impressed with the trust and devoted to those purposes (*x*). A body of such trustees, therefore, who manage and control a building owned by them, are chargeable in respect of it. The General Trustees of the Free Church of Scotland were held to be liable in respect of their General Assembly Hall (*y*). In another case, a body established for charitable purposes which owned and occupied a building used by two other such bodies (but not let to them) was held to be liable to tax (*z*) in respect of the building; if the two latter bodies had become occupiers of portions of the building, the result would probably have been to exempt the owning body as to the annual value of those portions (*a*).

(*q*) No. VI. r. 1 (c). Cf. *Tennant* v. *Smith*, [1892] A. C. 150, *supra*, p. 26.

(*r*) No. VI. r. 2, *infra*, p. 419.

(*s*) The procedure as to exemptions is different; *vide infra*, p. 269.

(*t*) Sect. 37 (1) (a), *infra*, p. 352. (*u*) *Vide supra*, p. 266.

(*x*) *Ex parte Essex Hall*, [1911] 2 K. B. 434, *supra*, p. 262.

(*y*) *Maughan* v. *Free Church of Scotland* (1893), 3 Tax C. 207.

(*z*) Except as to one room, which was let by the owning body; they were admittedly exempt as far as the rent of this room was concerned.

(*a*) *Ex parte Essex Hall*, [1911] 2 K. B. 434, *supra*, p. 262.

Although hospitals, public schools and almshouses are expressly mentioned in sect. 37 (1) (a), and the authority of a college or hall in any university is not, this does not prevent such an authority from enjoying the exemption as regards the rents and profits of lands belonging to it, so far as these are applied to charitable purposes only (*b*).

The lands are to be assessed in the ordinary course in spite of the exemption (*c*); the tax will be deducted by the tenants in paying rent (*d*), and a claim for repayment must be made to the Special Commissioners (*e*).

"Exemptions" under Schedules C and D.

An exemption is created in respect of any interest, &c. taxable under Schedule C (*f*) and of any "yearly interest or other annual payment" (*g*), provided that these form "part of the income of any body of persons (*h*) or trust established for charitable purposes only," or are prevented by rules or regulations under an Act of Parliament, charter, decree, deed of trust, or will from being applied to any purpose other than charitable; and so far as they are applied to charitable purposes only (*i*). The meaning of "charitable purposes" has already been indicated (*k*). The exemption above described applies in favour of the authority of a college in a university, as to any other such body (*l*).

There is no exemption for the profits of a trade carried on by a charitable body, though the profits are wholly

(*b*) *Ex parte University College of North Wales* (1909), 5 Tax C. 408, *supra*, p. 262.

(*c*) Sect. 37 (1) (a), proviso.

(*d*) *Vide supra*, p. 55.

(*e*) *Vide infra*, p. 274.

(*f*) See Chap. V.

(*g*) The meaning of these terms is discussed, *supra*, pp. 178, 184. Interest on daily balances at a bank is not yearly interest within the meaning of the exemption: *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381, *supra*, pp. 183, 262.

(*h*) Defined in sect. 237, *infra*, p. 406.

(*i*) Sect. 37 (1) (b), *infra*, p. 352; the syntax of this sub-section is confused, but it is hoped that the paraphrase in the text does not misrepresent its meaning.

(*k*) *Supra*, p. 262.

(*l*) *Ex parte University College of North Wales*, *supra*.

devoted to charitable purposes (*m*). A hospital which takes in paying patients is not exempt in respect of payments received from them (*n*).

There is a further provision creating an exemption from tax under Schedule C in respect of any interest, annuities, dividends and shares of annuities payable out of any public revenue (*o*), which stand in the names of trustees and are applicable solely towards the repairs of any cathedral, college, church or chapel or any building used solely for divine worship, so far as they are in fact applied to those purposes (*p*). Observe in cases not covered by any other provision, that the exemption here referred to does not give relief in respect of interest or other annual payments which are not payable out of any public revenue, and are therefore charged under Schedule D.

These exemptions under Schedule C or D are obtained by means of a claim made to the Special Commissioners as in the case of exemptions under Schedule A (*q*), the tax having previously been deducted at the source (*r*). There is, however, a provision in Schedule C against deduction of tax under the rules as to dividends payable by the Bank of England where a certificate has been given to the Bank under sect. 28 of the Charitable Trusts (Amendment) Act, 1855 (*s*).

(*m*) *Trustees of Psalms and Hymns* v. *Whitwell* (1890), 3 Tax C. 7; cf. *Coman* v. *Rotunda Hospital, supra*, p. 267.

(*n*) *St. Andrew's Hospital, Northampton* v. *Shearsmith* (1887), 19 Q. B. D. 624. This case was decided before *Pemsel's case*, p. 262, on the ground that the money was not devoted to charitable purposes only; the *Psalms and Hymns case* was decided on the safer ground that such receipts are not "annual payments."

(*o*) See Chap. V.

(*p*) Sect. 37 (1) (c). Most cases to which this provision extends are already covered by sub-section (b), *supra;* for the purposes named are "charitable purposes," *vide supra*, p. 262; but it is possible that interest, &c., though solely applicable to such repairs, may be in the hands of trustees who are not trustees for charitable purposes *only*.

(*q*) Sect. 40, *vide infra*, p. 355.

(*r*) *Vide infra*, p. 274.

(*s*) See rule 10 of those Rules, *infra*, p. 430; and *vide supra*, p. 103. The provision does not appear to affect dividends payable out of foreign revenues.

British Museum.

The trustees of the British Museum are exempt from tax under Schedule A in respect of lands and tenements vested in them (whether occupied by them or not) (*t*); in regard to dividends of stock vested in them or in any other person for their use, they are entitled to the like exemptions as are granted to charitable institutions (*u*).

The exemptions may be claimed from the General Commissioners, or, as in the case of trustees for charitable purposes, from the Special Commissioners (*x*).

Registered Friendly Societies.

A registered friendly society (*y*), whatever the amount of its income, which is precluded by Act of Parliament or by its own rules from assuring to any person a gross sum exceeding 300*l.*, or an annuity exceeding 52*l.* a year, is entitled to exemption from tax under Schedule A, Schedule C, and Schedule D (*z*). The exemption under Schedule A extends to all lands the property in which belongs to the society, whether occupied by it or not; and that under Schedule D to any profits chargeable under that Schedule, including the profits of any trade carried on by the society (*a*).

The exemption may be claimed from the General Commissioners, or (in the same manner as in the case of trustees for charitable purposes) from the Special Commissioners (*b*).

(*t*) Sect. 38, *infra*, p. 353. The first portion of this section relating to tax charged under Sched. A is of wider scope than the earlier provision contained in sect. 149 of the Act of 1842, as to which see the observations of Lord Macnaghten in *Pemsel's case*, [1891] A. C. at p. 589.

(*u*) Sect. 38. The latter part of this section is presumably intended to cover the same ground as sect. 37 (1) (b); if so, it is unfortunate that the language is different.

(*x*) Sect. 40, *infra*, p. 355; see proviso to sub-section (1).

(*y*) See Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 8 *sqq.*, 41; 1908 (8 Edw. 7, c. 31), ss. 1, 3.

(*z*) Income Tax Act, 1918, s. 39 (1), *infra*, p. 353.

(*a*) Contrast the limits placed upon exemptions in favour of trustees for charitable purposes, *supra*, pp. 268, 269.

(*b*) Sect. 40; see proviso to sub-sect. (1), *infra*, p. 355.

Unregistered Friendly Societies.

An unregistered friendly society whose income does not exceed 160*l.* is entitled to complete exemption from the income tax, under whatever schedule charged (*c*). If its income exceeds that limit, it enjoys no exemption.

The exemption may be claimed in the same manner as that of a registered friendly society (*d*).

Savings Banks.

A savings bank which is certified under the Savings Bank Act, 1863 (*e*), is entitled to exemption from tax in respect of its interest and dividends arising from investments with the National Debt Commissioners (*f*). The tax on such interest and dividends is deductible at the source (*g*); where this has been done, repayment may be claimed from the Special Commissioners (*h*).

Apart from the above, every savings bank is entitled to exemption from tax under Schedules C and D, so far as its income is applied in the payment or credit of interest to any depositor (*i*), provided that it makes a return in respect of every depositor who is paid or credited with more than 5*l.* in the year; the return must be made before May 1st in the year after that for which assessment is claimed (*k*). The depositor is, however, taxable for interest (of whatever amount) paid or credited to him (*l*). In this case also the claim must be made to the Special Commissioners (*m*).

Savings banks are also entitled to a certain relief in respect of expenses of management (*n*).

(*c*) Sect. 39 (1), *infra*, p. 353.
(*d*) *Supra*, p. 271.
(*e*) 26 & 27 Vict. c. 87; see sects. 3, 4.
(*f*) Income Tax Act, 1918, s. 39 (3) (a); *infra*, p. 353.
(*g*) *Vide supra*, pp. 101, 102.
(*h*) Sect. 40; *vide infra*, p. 355.
(*i*) Sect. 39 (3) (b), *infra*, p. 353.
(*k*) *Ibid.*, proviso (ii).
(*l*) *Ibid.*, proviso (i); the tax is charged under Case III. of Sched. D, r. 1 (e), *vide supra*, p. 203.
(*m*) Sect. 40; *vide infra*, p. 355.
(*n*) Sect. 33; *vide supra*, p. 206.

Trade Unions.

A registered trade union (*o*) which is precluded by Act of Parliament or by its own rules from assuring to any person a gross sum exceeding 300*l.*, or an annuity of 52*l.* a year, is entitled to certain exemptions from tax under Schedules A, C, and D. These exemptions extend only to interest and dividends which are in law applicable, and which are in fact applied, solely for the purpose of provident benefits (*p*). The reference to interest or dividends in connection with Schedule A appears to apply to interest on mortgages of lands, &c., and to interest or dividends receivable in respect of shares in concerns assessed under No. III. (*q*); income tax in both cases being paid in the first instance under Schedule A, and charged on the recipient by way of deduction (*r*).

These exemptions can be claimed only from the Special Commissioners (*s*).

There is no exemption for unregistered trade unions.

Industrial and Provident Societies.

A society registered under the Industrial and Provident Societies Act, 1893 (*t*), is entitled to exemption from tax under Schedules C and D, unless it sells to persons who are not members, and the numbers of its shares is limited either by its rules or by its practice (*u*). The exemption extends to the profits of trade, as well as to interest on investments. The exemption must be claimed from the Special Commissioners (*x*).

There is no exemption for members or employees as such (*y*).

(*o*) See Trade Union Acts, 1871 (34 & 35 Vict. c. 31), sects. 13 *sqq.*; 1876 (39 & 40 Vict. c. 22), ss. 6, 8; 1913 (2 & 3 Geo. 5, c. 30), s. 7.

(*p*) Income Tax Act, 1918, s. 39 (2), *infra*, p. 353; "provident benefits" includes the payments there specified.

(*q*) See Chapter III.

(*r*) *Vide supra*, pp. 55, 59, 76.

(*s*) Sect. 40; *vide infra*, p. 274.

(*t*) 56 & 57 Vict. c. 39; see sects. 4—6, 79.

(*u*) Income Tax Act, 1918, s. 39 (4), *infra*, p. 354.

(*x*) Sect. 40, *vide infra*, p. 274.

(*y*) Sect. 39 (4).

National Insurance Funds.

In addition to any other rights of exemption that they may possess, the following bodies are entitled to exemption from tax charged under any Schedule in respect of all income derived from the sources mentioned in connection with them (*z*):—

"Approved societies" and their branches under Part I. of the National Insurance Act, 1911 (*a*): the society's funds or credits under that Part and any investment thereof;

The Insurance Commissioners (*b*) (for England, Scotland, Ireland and Wales): any funds held, controlled or managed by them under or for the purposes of that Act;

Insurance Committees established under Part I. of that Act: the Committee's funds or credits under the National Insurance (Health) Acts, 1911—1918;

The trustees of the special fund constituted for the Mercantile Marine under those Acts (*c*): the special fund;

The National Health Insurance Joint Committee: any funds held, controlled, or managed by them under or for the purpose of those Acts.

These exemptions are to be claimed from the Special Commissioners (*d*).

Claim for Exemption before Special Commissioners.

The "exemptions" dealt with above (*e*), and created by sects. 37—39 inclusive, can (with three exceptions) be obtained only by application to the Special Commissioners (*f*). The excepted cases are the exemptions in favour of the British Museum (*g*), of unregistered, and of

(*z*) Sect. 39 (5), (6), *infra*, p. 354.

(*a*) 1 & 2 Geo. 5, c. 55; see sect. 23.

(*b*) See sects. 57, 80—82.

(*c*) See the sub-section substituted for sub-sect. (6) of sect. 48 of the Act of 1911 by sect. 27 (1) (c) of the Act of 1918 (7 & 8 Geo. 5, c. 62).

(*d*) Income Tax Act, 1918, s. 40, *infra*, p. 355.

(*e*) Pp. 268 to 274; note that the "allowances" under Sched. A, discussed *supra*, p. 266, may be claimed before the General Commissioners; and as to interest, &c. payable out of public revenues to charitable bodies, *vide supra*, p. 103.

(*f*) Sect. 40, *infra*, p. 355. As to the various bodies of Commissioners and their functions and areas of jurisdiction, see Chap. XVI.

(*g*) Under sect. 38, *supra*, p. 271.

registered, friendly societies (*h*), all of which may also be allowed by the General Commissioners in the course of assessment, or of appeal against the same (*i*).

The claim must be made in writing in the prescribed form (*k*) and verified by an affidavit, made by the treasurer, trustee or any duly authorised agent of the claimant body before a general or additional commissioner for the division in which that person resides (*l*).

The Special Commissioners on proof of the facts to their satisfaction shall allow the claim and issue an order for repayment (*m*). No appeal is provided in this case, but if the Special Commissioners fail upon due proof before them to allow the claim, or to issue such an order, mandamus will lie to compel them to do so (*n*). The Court has power to order the Special Commissioners to pay costs (*o*).

Special penalties are attached to the making of false or fraudulent claims for exemption under sects. 37—39 in respect of tax chargeable under Schedule C (*p*).

The claim must be made within three years next after the year of assessment to which it relates (*q*).

Exemptions conferred by Local Acts.

In the 18th and the earlier part of the 19th centuries it was not unusual for a local Act authorising an undertaking which was esteemed to be of public benefit to contain a provision exempting that undertaking or its promoters

(*h*) Under sect. 39 (1), *supra*, pp. 271, 272.

(*i*) Sect. 40 (1), proviso.

(*k*) Sect. 40 (1).

(*l*) Sect. 40 (2).

(*m*) Sect. 40 (1), (3).

(*n*) *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, *supra*, p. 261; the Lords were unanimous on this question, which is dealt with by Lord HALSBURY, L.C., at p. 539, and by Lord HERSCHELL at p. 569. The same procedure was applied in *R.* v. *Special Commrs.*, *Ex parte University College of North Wales*, and *Ex parte Essex Hall*, *supra*, pp. 261, 262. See also Chap. XVII.

(*o*) *R.* v. *Special Commrs.*, *Ex parte Dr. Barnardo's Homes*, [1920] 1 K. B. 26, where the nature of the remedy was considered; the judgment was reversed in C. A. on the merits, *ibid.*, 468, *supra*, p. 263, but that does not affect the decision on this point.

(*p*) Sect. 40 (4), *infra*, p. 355; as to penalties generally, see Chap. XV.

(*q*) Sect. 41, *infra*, p. 355.

from rates and taxes. Such enactments were formerly thought to apply only to rates and taxes in existence at the date of the Act, or substituted for what were then in existence; but it is now clear that they apply also to future rates and taxes unless there are words which show that such was not the intention of Parliament (*r*). It falls to be decided, however, upon the language of each enactment whether it was intended to apply, not only to local rates, but to national taxes such as the income tax. If the Act shows that the undertaking was considered to be of national and not merely of local importance, the exempting clause will, if the language allows it, be construed in the wider sense (*s*). And if that enactment clearly intends that the Crown is to be affected, the Crown need not be expressly named (*t*).

Accordingly, where a local Act of the Thames Conservators provided that lands and buildings vested in them in respect of the Thames shall be "exempt from all parliamentary rates, taxes, and assessments and impositions whatsoever" (in addition to an exemption from parochial rates and taxes), the Conservators were held not to be liable to income tax in respect of such land and buildings (*t*). The proprietors of a ferry forming an important link between Devon and Cornwall, and set up under a local Act which provided that they "shall not be rated or assessed for . . . any tax, rate or assessment whatsoever, parliamentary or parochial, for or in respect of the said ferry," were also held to be exempt (*u*).

(*r*) *Associated Newspapers, Ltd.* v. *City of London Corporation*, [1916] 2 A. C. 429.

(*s*) *Pole-Carew* v. *Craddock*, [1920] 3 K. B. 109.

(*t*) *Stewart* v. *Thames Conservators*, [1908] 1 K. B. 893; the tax was claimed under Sched. A, No. I., *supra*, p. 34, and Sched. B, *supra*, p. 92.

(*u*) *Pole-Carew* v. *Craddock*, *supra*; the tax was claimed under Sched. A, No. III., *supra*, p. 80.

CHAPTER XIV.

SUPER-TAX.

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Nature of the Tax.

SUPER-tax is an additional duty of income tax "imposed on individual incomes exceeding a specified amount. . . . It is collected and recovered by means (with some special and additional provisions) of the ordinary income tax machinery. It is intended, like the ordinary income tax, to be a permanent tax, though imposed annually only" (*a*). The basis of income on which it is imposed is, however, calculated in a manner somewhat different from that of ordinary income tax. Moreover, the super-tax does not follow the scheme of the income tax in depending upon the existence during the year of assessment of the source of income in respect of which it is imposed (*b*), or, indeed, of any source of income (*c*); the super-tax regards only the total income (from all sources) in respect of which the individual was charged, or might have been charged, in the previous year.

Immediately before the year 1920-21, the super-tax was charged in respect of individual incomes exceeding 2,500*l.* (*d*); it is now charged wherever the income exceeds

(*a*) Act of 1918, s. 4; *Bowles* v. *A.-G.*, [1912] 1 Ch. 123, per PARKER, J., at pp. 135, 136.

(*b*) *FitzGerald* v. *I. R.*, [1919] 2 K. B. 154, *infra*, p. 281. Contrast *National Provident Institution* v. *Brown*, *supra*, pp. 5, 178.

(*c*) *Crane* v. *I. R.*, [1919] 2 K. B. 616, *infra*, p. 284.

(*d*) Sect. 4.

2,000*l.*; but there is no charge in respect of the first 2,000*l.* of the income. So that an individual who has an income of say, 2,300*l.*, is chargeable to super-tax on the balance of 300*l.* only, according to the scale provided (*e*).

Note that super-tax applies only to the income "of any individual" (*f*); companies and other bodies of persons (*g*) are not liable to it, but a member of a partnership may be so, if his own total income exceeds the limit (*h*).

Super-tax is included in calculating the amount of relief to be given in respect of Dominion income tax (which includes Dominion super-tax), but the amount is in general allowed by way of reduction or repayment of income tax (*i*). In the exceptional cases in which this relief is given by way of reduction of income charged, the income is reduced for super-tax purposes as well as for income tax (*k*).

"*Total Income from all Sources.*"

The criterion according to which the liability, and the amount of the liability, to super-tax are ascertained is the total income of the individual from all sources for the previous year (*l*).

For the meaning of "total income from all sources" the reader is referred to Chapter I., where it is considered in connection with deductions from assessable income (*m*); it may be noted here that "the total income includes income which is directly assessed, as well as income the tax on which is deducted at the source" (*n*).

But the following additional points have to be borne in mind, as far as total income for super-tax purposes is con-

(*e*) Finance Act, 1920, s. 15, *infra*, p. 468, where the present scale is set out.

(*f*) Act of 1918, s. 4, *infra*, p. 339.

(*g*) *Vide supra*, p. 242.

(*h*) *Gaunt* v. *I. R.*, *infra*, p. 281. A special provision, relieving to some extent those serving abroad during the War, will be found in sect. 51, *infra*, p. 358.

(*i*) Finance Act, 1920, s. 27, *vide supra*, p. 30.

(*k*) *Vide supra*, p. 32.

(*l*) Act of 1918, ss. 4, 5 (1), *infra*, p. 339.

(*m*) *Vide* pp. 22—27.

(*n*) *Brooke* v. *I. R.*, [1918] 1 K. B. 257, *infra*, p. 284; *Samuel* v. *I. R.*, [1918] 2 K. B. 553, *infra*, p. 283; *Jones* v. *I. R.*, [1920] 1 K. B. 711, *infra*, p. 284.

cerned. First, there is no allowance in respect of earned income, the full amount of which is included (*o*). Secondly, any income received by the individual and chargeable with tax by way of deduction (*p*) is included in the income of the year in which it is receivable, and any annual sum payable out of the property or profits of the individual on which he is entitled to deduct tax (*p*), is excluded from the income of the year in which it is payable (*r*). Thirdly, where the individual is in the service of the Crown abroad, any sum which the Treasury may allow as necessary expenses of his office and for which an allowance has not already been made is to be excluded (*s*). Fourthly, any sum by which any assessment under Schedule A is reduced for purposes of collection (*t*), or on which income tax has been repaid in respect of the cost of maintenance, repairs, insurance and management (*u*) is to be excluded from that income (*x*).

Interest on war loan securities issued free of income tax but not free of super-tax is included in total income for super-tax purposes (*y*).

Wounds and disability pensions and war gratuities are exempt from super-tax as well as income tax, and are excluded from total income (*z*).

The charge is on Income for Previous Year.

The charge of super-tax on the income estimated for income tax "for the previous year" has a curious effect, especially in the case of income derived from the profits of a trade or profession (*a*) or from any interest (*e.g.*, interest on certain Exchequer Bonds and War Loan Stock), dis-

(*o*) Finance Act, 1920, s. 15 (4), *infra*, p. 468.
(*p*) *Vide supra*, pp. 55—59, 181—191.
(*r*) Act of 1918, s. 5 (3) (c).
(*s*) Sect. 5 (3) (b).
(*t*) Sched. A, No. V. r. 7, *vide supra*, p. 43.
(*u*) Rule 8, *vide supra*, p. 44.
(*x*) Sect. 5 (3) (a).
(*y*) Sect. 48, *infra*, p. 357.
(*z*) Finance Act, 1919, ss. 16, 17, *infra*, pp. 463, 464.
(*a*) Sched. D, Cases I. and II., *vide supra*, p. 162.

counts, &c., that are not taxed at the source (*b*). The amount on which super-tax is charged is never the income of the year in which it is charged; and in the cases just mentioned, it is not even the actual income of the previous year, but either the income of the year preceding that year (*c*), or an average of the profits of the three years preceding that year (*d*).

As to any source of income in respect of which there has been a direct assessment either upon the individual, or upon a partnership or company in which he is entitled to a share in the profits (*e*), where that assessment has become final and conclusive (*f*) for the purposes of income tax for any year, it is final and conclusive for the purposes of super-tax for the next year; and no allowance or adjustment on the ground of diminution of income or loss is taken into account for super-tax, unless it has previously been made for income tax purposes and according to the income tax procedure (*g*).

Except in the case of death during the year of assessment to super-tax, the super-tax has little concern with the actual facts of that year, nor indeed with the actual facts of the previous year, except to the extent to which the income tax assessment has itself taken the facts of the previous year into account. Thus, where a partner's percentage of the partnership profits had increased, but the actual profits had been declining during the three years over which the average was taken, he was held to be liable to super-tax on the percentage in force in the previous year as applied to the profits estimated on the three years'

(*b*) Sched. D, Case III., *vide supra*, p. 177.

(*c*) Sched. D, Cases I., II. and III., *vide supra*, pp. 163, 167.

(*d*) Sched. D, Cases I. and II., *vide supra*, p. 163.

(*e*) *Gaunt* v. *I. R.*, *infra*, p. 281.

(*f*) *Vide infra*, p. 293.

(*g*) Sect. 5 (2), *infra*, p. 340; cf. sect. 18, *infra*, p. 343. Sect. 5 (2) first appeared as sect. 18 of the Finance Act, 1915, and gets rid of the decisions to the contrary in *I. R.* v. *Brooks*, [1915] A. C. 478, and *Wylie Hill* v. *I. R.*, [1912] S. C. 1246. Nor is it any longer necessary to deal with the points decided in *Bartlett* v. *I. R.*, *infra*, except with regard to the allowances and adjustments for purposes of income tax referred to in sect. 5 (2); these are discussed *supra*, pp. 168—174.

average, but not to the actual profits of that year (*h*). And a person who has ceased to exercise a trade (*i*) or a profession (*k*) before the commencement of the year for which the super-tax is assessed is nevertheless liable to super-tax for that year, provided that he was assessed to income tax in the previous year in respect of the trade or profession (*l*).

Where, however, the individual dies during the year of assessment for super-tax, a part only of the year's super-tax is payable, proportionate to the part of the year during which the individual was alive (*m*). There is no provision for any other change that may take place during the year of assessment; and a person "without any income and without any source of income, even an adjudicated bankrupt, may thus be liable to super-tax" (*n*).

The income of an incapacitated, non-resident, or deceased person is chargeable to super-tax in the name of his representative (*o*), or the incapacitated or non-resident person himself may be charged if he can be reached by a direct assessment (*p*).

(*h*) *Gaunt* v. *I. R.*, [1913] 3 K. B. 395, applying the provision in sect. 20, proviso (ii), as to the estimation of a partner's income for purposes of exemption, &c., *vide supra*, p. 26. The result was that the appellant was assessed to super-tax in respect of an income of nearly 9,000*l.*, whereas he had received a little over 3,000*l.* in the previous year, and had ceased to trade before the assessment was made.

(*i*) *Bartlett* v. *I. R.*, [1914] 3 K. B. 686, *supra*, p. 167.

(*k*) *FitzGerald* v. *I. R.*, [1919] 2 K. B. 154, *supra*, p. 277.

(*l*) In *FitzGerald's case, supra*, the profession had been exercised in the previous year, carrying with it a liability to income tax for that previous year; and it was held, such liability being established, to make no difference for super-tax purposes that the profession was discontinued before the super-tax year of assessment; in *Bartlett's case*, on the other hand, it seems doubtful whether the trade was "carried on" by the appellant in the previous year ending April 5th, 1909, but the facts are somewhat obscure. Under sect. 5 (2), any such point must be taken, if at all, in connection with the income tax assessment.

(*m*) Sect. 6, *infra*, p. 340. This provision has no effect in the case of a separate assessment of a husband or wife where the other party dies: see *Wyndham* v. *I. R.*, *infra*, p. 285.

(*n*) *I. R.* v. *FitzGerald*, per ROWLATT, J., [1919] 2 K. B. at p. 161.

(*o*) Sect. 7 (2); see Chap. XII.

(*p*) Cf. *R.* v. *Newmarket Commrs.*, *Ex parte Huxley*, [1916] 1 K. B. 788, *supra*, p. 252.

Sums paid over to other persons: Life Assurance Premiums.

Any annual payments made to others under such conditions that the payer is entitled to deduct tax in making the payments (*q*) are to be excluded from the total income of the payer for purposes of super-tax, because they do not in effect form part of the total income of that individual and are not reckoned to do so in estimating such income for the purpose of a deduction from assessable income (*r*). For the purpose of calculating the income for super-tax, such payments (together, of course, with the income tax deducted) are deducted in the year in which they are payable, notwithstanding that they may have, in whole or in part, accrued due before that year (*s*). The annual payments are to be deducted, even if they are not actually paid over to other persons but are set aside and credited to a fund which stands in the name of the payers, and in which other persons have an interest as well (*t*).

On the other hand, the relief given in respect of life insurance premiums for the purposes of income tax does not operate to diminish the total income on which super-tax is payable (*u*). And premiums payable under covenant in order to keep up policies assigned as securities for advances cannot be deducted. These are not annual payments in respect of which tax can be deducted against the payee; their amount is therefore part of the income of the payer and not of the payee (*x*).

Dividends: Bonus Shares.

A company or other body of persons is charged to income tax on its profits, and deducts the tax against its

(*q*) *Vide supra*, pp. 55—59, 181—191.

(*r*) See sect. 5 (1), (3) (c), and *vide supra*, p. 24.

(*s*) Sect. 5 (3) (c).

(*t*) *Stocker* v. *I. R.*, [1919] 2 K. B. 702; the case arose under a somewhat peculiar arrangement for carrying on a business devised by will.

(*u*) Because that relief is given by way of a reduction of the amount of tax payable, sect. 32 (1), *infra*, p. 347, and not by way of a diminution of the total income from all sources: see sect. 5 (1), (2), *infra*, p. 339.

(*x*) *Howe* (*Earl*) v. *I. R.*, [1919] 2 K. B. 336.

shareholders on distributing a dividend to them (*y*). The dividend so received forms part of the total income of the recipient for purposes of super-tax in the year in which it was payable, although it accrues (in whole or in part) before or after that year (*z*). In calculating that income there must be included, as well as the sum actually received by the individual, the appropriate proportion of the income tax paid by the company in respect of the profits distributed, even though the dividend purports to have been paid free of income tax (*a*).

The case of a bonus allotment of shares differs from that of a distribution of dividend, although the allotment is made in respect of profits earned by the company. Here, the shareholder does not receive the face value of the shares allotted to him, nor is he to be considered in law to have received that or any other sum of money; the transaction is in substance not a payment of income but an increase of capital; the shares thus allotted to any individual do not, therefore, form part of his total income for purposes of super-tax (*b*). In the case cited, there was no option to take payment in cash; but it is submitted that the same rule will apply where such an option has been given, provided that no cash payment has been in fact received.

Sums paid for use of Patent.

An interest in patent machines had been sold for a lump sum payable in instalments, together with an annual percentage on the proceeds of sales for ten years; income tax had been deducted on the percentage payments. They were held to form part of the total income for

(*y*) General Rules, r. 20, *vide supra*, p. 244.

(*z*) Sect. 5 (3) (c), *supra*, p. 282.

(*a*) *Samuel* v. *I. R.*, [1918] 2 K. B. 553; see also *A.-G.* v. *Ashton Gas Co.*, *supra*, p. 244. Where the actual distribution takes place in a different year from that in which tax is paid on the profits, the tax must be added back at the rate prevailing in the year in which the tax was paid: see per ROWLATT, J., in *I. R.* v. *Blott*, *infra*, [1920] 1 K. B. at p. 132. Loans by a "one-man" company to its principal shareholder were found not to form part of his total income in *I. R.* v. *Sansom*, [1921] W. N. 78.

(*b*) *I. R.* v. *Blott*, [1920] 1 K. B. 114; [1920] 2 K. B. 657.

purposes of super-tax. It was not contended that the instalments of the lump sum should be included in the total income (*c*).

Non-Resident Persons.

Although the super-tax is chargeable on the incomes of individuals, those individuals need not be resident in the United Kingdom in order to be liable. If the total income of a non-resident which is chargeable with income tax in the United Kingdom exceeds 2,000*l.* in any year, that individual is chargeable to super-tax in the following year upon the amount of the excess (*d*), even though the non-resident has no source of income in the United Kingdom in the year of super-tax assessment (*e*). These decisions apply equally where the income tax has been deducted at the source and where the income tax has been assessed on the income of the non-resident individual. Neither of these cases happened to be that of a non-resident person assessed in the name of an agent or other resident person (*f*); but there can be no doubt that the same rule applies in those circumstances (*g*).

Husband and Wife.

The income of a wife living with her husband is normally treated as income of the husband for income tax purposes (*h*), and consequently also for purposes of super-tax; but if application is made the super-tax may be charged on the income of the husband and on that of the wife as if they were not married (*i*). Such an application, however, affords no relief either as to liability or as to amount; the only practical result is that parts of the super-tax payable in respect of the aggregate income are

(*c*) *Jones* v. *I. R.*, [1920] 1 K. B. 711, *supra*, p. 189.

(*d*) *Brooke* v. *I. R.*, [1918] 1 K. B. 257; *vide supra*, p. 278.

(*e*) *Crane* v. *I. R.*, [1919] 2 K. B. 616.

(*f*) As to assessment for income tax of the income of a non-resident, *vide supra*, p. 253.

(*g*) See sect. 7 (2), *infra*, p. 340.

(*h*) *Vide supra*, p. 257.

(*i*) Sect. 8, *infra*, p. 341; see the similar provisions as to income tax in sect. 25 of the Finance Act, 1920, *supra*, p. 258.

charged in the proper proportions on the incomes of the husband and wife respectively (*k*). The application must be made within six months before the 6th July in the year of super-tax assessment, in any manner or form that may be prescribed (*l*).

A wife (or husband) who has obtained a separate assessment to super-tax under these provisions cannot afterwards claim the relief afforded by sect. 6 on account of the death of the husband (*m*) (or of the wife).

Bequests free of Super-Tax.

A testator may direct his executors or trustees to pay super-tax just as he may direct them to pay income tax, or to pay an annuity, &c., without deduction of income tax (*n*); and if the devisee or annuitant has other income, the executors or trustees must pay that part of the super-tax levied on her whole income, which is proportionately attributable to the amount paid by them under the will to her, either directly or indirectly by way of deduction of tax (*o*).

The super-tax must, however, be specifically mentioned in the will; a gift "clear of all deductions, including income tax" has been held not to oblige or allow the executors or trustees to pay the super-tax, which must be borne by the annuitant (*p*). On the other hand, a gift of an annual sum "free of income tax and of all other deductions," with other language showing the intention of the testator, was held to entitle the annuitant to "the naked amount of the annuity free from both income tax and super-tax"; the super-tax was directed to be apportioned between the annuity and the residue on the principle above indicated (*q*).

(*k*) Sect. 8 (1) (b).

(*l*) Sect. 8 (1); Finance Act, 1919, s. 26, *infra*, p. 466.

(*m*) *Wyndham* v. *I. R.*, [1920] 3 K. B. 260; *vide supra*, p. 281.

(*n*) *Vide supra*, pp. 59, 199.

(*o*) *In re Bowring* (1918), 34 T. L. R. 575; as to deduction of income tax from payments made under a will, *vide supra*, p. 199.

(*p*) *In re Crawshay*, [1915] W. N. 412.

(*q*) *In re Doxat*, [1920] W. N. 262.

Assessment: Appeals: Collection and Recovery.

The assessment to super-tax is made by the Special Commissioners (*r*), and General Commissioners have no powers or duties in connection with super-tax. The Special Commissioners may amend an assessment or make a new or additional assessment within the year of assessment, or within three years thereafter (*s*). Appeals are heard by the Special Commissioners; subject to this, all the provisions applying to income tax as regards assessment, collection and recovery, appeals, statement of cases for the High Court, and so on, apply to the super-tax as well, so far as they are applicable (*t*). The rules as to "persons chargeable" are also to apply to the same extent, but in this connection it must be borne in mind that partnerships and bodies of persons are not chargeable to super-tax, because they are not "individuals" (*u*).

Notice of appeal must be given within twenty-eight days of the service of the notice of assessment; it must be given to the Special Commissioners in writing, and must specify the grounds of appeal (*x*).

Returns.

Every person on whom notice is served in the manner prescribed by the Regulations (*x*) must make a return in the form and within the time required by the notice, of his total income from all sources, or of that of any incapacitated, non-resident or deceased person chargeable to income tax in his name (*z*); the return must be made whether that total income is, or is not, such as to give rise to a liability to super-tax (*a*). Moreover, any person who is charge-

(*r*) Act of 1918, s. 7, *infra*, p. 340, and regulations made thereunder, *infra*, p. 481; see also sect. 238 (a), *infra*, p. 407.

(*s*) Sect. 7 (7).

(*t*) Sect. 7 (6); the relevant income tax provisions are dealt with in Chaps. XVI.—XVIII.

(*u*) Sect. 7 (6), (2); see Chap. XII.

(*x*) Regulations, *infra*, p. 481.

(*z*) See Chap. XII.

(*a*) Sect. 7 (2), *infra*, p. 340.

able to super-tax must give notice to that effect before 30th September in the year for which he is chargeable (*b*). Penalties are provided in either case (*c*). The return, or the absence of one, is not binding on the Special Commissioners (*d*).

These returns may be demanded in any year although no Act imposing the super-tax for that year has yet been passed (*e*).

(*b*) Sect. 7 (3).
(*c*) Sect. 7 (4).
(*d*) Sect. 7 (5).
(*e*) Sect. 210, *infra*, p. 399; *Bowles* v. *A.-G.*, [1912] 1 Ch. 123, *supra*, p. 277.

CHAPTER XV.

RETURNS: PENALTIES: CLAIMS FOR ALLOWANCE OR DEDUCTION.

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Returns for Income Tax.

For income tax purposes various classes of persons are required to make returns (also called "statements, lists and declarations") of many different kinds. The Fifth Schedule to the Act of 1918 (*a*) sets out under seventeen heads the classes of persons who are required to make these returns, and the subjects on which information is required. The liability to make a return arises from the affixing of a general notice on the church door of the parish in which the person resides, who is required to make the return (*b*); or from the service of a particular notice on that person (*c*); in either case the return has to be made within the time limited in the notice. The liability to make returns of profits is not confined to persons whose own income is in question (*d*); it is imposed upon every person acting in any character on behalf of any person who by reason of incapacity or of non-residence in the United Kingdom

(*a*) The observance of the rules and directions of this Schedule is directed by sect. 207, *infra*, p. 399; but as the Revenue authorities send forms of return to the persons required to make them, there is not much need to study the Fifth Schedule. The return required for super-tax purposes is dealt with in Chap. XIV.

(*b*) Sects. 98, 100, *infra*, p. 360.

(*c*) Sects. 99, 100, *infra*, p. 360; sect. 109 (a), *infra*, p. 366. As to the method of service, see sect. 99 (2), sect. 220, *infra*, p. 402, and *Berry* v. *Farrow*, [1914] 1 K. B. 362, *supra*, p. 236; and as to the assessor's duties after delivery of notices, see sect. 108, *infra*, p. 365.

(*d*) See Fifth Schedule, No. XVI., *infra*, p. 461.

cannot be personally charged (*e*); upon every person who in whatever capacity is in receipt of any money or value, or of any taxable profits, belonging to any other person who is chargeable in respect thereof or would be so chargeable if he were resident and not incapacitated (*f*); and upon the secretary of a company or the officer acting as treasurer, auditor, or receiver of any other body of persons (*g*). Any person may be required to give a list of every lodger and inmate in his dwelling-house (*h*). Employers may be required "by notice from an assessor" (*i*) to give lists of all their employees (including directors and managers of a company and weekly wage-earners); returns of payments made in respect of the employment must also be sent, except in the case of any employee whose yearly remuneration does not exceed 150*l.* and who is not employed in any other employment (*k*); a general notice (*l*) does not appear to be sufficient to oblige the employer to make such a return.

There are special provisions for a notice requiring a declaration or return from a person newly come into a parish (*m*).

A person who has two residences, or who carries on a trade or profession in different parishes, or in a parish other than the parish of his ordinary residence, may be called upon to make a return in each parish (*n*); and a person who owns or occupies lands in different parishes

(*e*) Sect. 101, *infra*, p. 362. Vicarious assessments in such cases are discussed *supra*, pp. 252 *sqq*.

(*f*) Sect. 103, *infra*, p. 362. See also Sched. D, Cases I. and II. r. 16, *infra*, p. 440.

(*g*) Sect. 106, *infra*, p. 364; see also sect. 105 (2). As to occupiers of land, *vide infra*, p. 297.

(*h*) Sect. 104, *infra*, p. 363.

(*i*) Or by a surveyor if the assessor fails to give notice: sect. 109 (a). As to service, see sect. 220, *infra*, p. 402.

(*k*) Sect. 105, *infra*, p. 363, as amended by Finance Act, 1920, Third Schedule, *infra*, p. 480. See also regulations as to weekly wage earners, Reg. 8, *infra*, p. 483.

(*l*) See above.

(*m*) Sect. 102, *infra*, p. 362, and sect. 109, *infra*, p. 366.

(*n*) Sched. D, Misc. Rules, r. 5, *infra*, p. 446; this rule probably applies to returns for all schedules, see sect. 208, *infra*, p. 399. See also "Place of Charge," *infra*, pp. 297—300.

must do so (*o*). Returns of profits arising from canals, inland navigations, streams of water, drains or levels, railways and other roads or ways of a public nature belonging to any company or trustee, may be included in one return in the parish in which the general accounts of the concern are usually made up (*p*).

The "Schedules" that may be demanded by precept of the General or Special Commissioners are dealt with in connection with appeals (*q*).

A person chargeable under Schedule D, who desires to be assessed by the Special Commissioners, must give notice to that effect in making his return (*r*).

Penalties.

If no return is made, or the return made is unsatisfactory, the Revenue authorities may make the best assessment they can, either in the first instance (*s*) or by way of additional assessment (*t*) or of surcharge (*u*).

But beyond this there are definite penalties provided in various enactments, some of which appear to cover the same ground in different ways; any attempt to reconcile them must be futile, and none has been made in any decided case. It seems to be for the Revenue authorities to elect under which of these provisions they will proceed.

First, for neglect or refusal to deliver a true and correct return within the time limited in a general or particular notice, or for wilful delay in delivering such a return, there is a penalty varying in amount at the option of the Inland Revenue (*x*); if they proceed in any Court, the penalty is 50*l.* (*y*); if they proceed before the General

(*o*) Sched. A, No. IX. r. 5, *infra*, p. 424.

(*p*) Rule 2, *infra*, p. 423; these concerns are charged under No. III. of Sched. A, see Chap. III.

(*q*) *Vide infra*, p. 316.

(*r*) Sect. 123, *vide infra*, p. 304.

(*s*) Sects. 107 (2), 112, 116, 121 (4); see Chap. XVI.

(*t*) Sect. 125, *infra*, p. 370. (*u*) Sect. 126, *infra*, p. 371.

(*x*) Sect. 107 (1), *infra*, p. 364; see also sect. 146, *infra*, p. 380, where a three years' limitation is imposed upon the levy of treble tax.

(*y*) The Court has no discretion to reduce it: cf. *L.-A.* v. *McLaren* (1905), 7 F. 984; 5 Tax C. 110.

Commissioners it is 20*l.*, together with treble the tax which the defaulter ought to be charged under the Act of 1918 (*z*); this means presumably treble the tax which he ought to be charged in respect of the source of income that should have been included in the return (*a*). These penalties are leviable where there has been mere neglect (*b*); the money penalty leviable where fraud is proved is no greater (*c*) (except in connection with a claim for any allowance or deduction) (*d*), but if any person makes a false statement or representation in a return he is also liable to six months' hard labour on summary conviction (*e*).

A person required to make a return on behalf of another may obtain further time from the General Commissioners if he satisfies them that he is unable to deliver a perfect return within the time limited (*f*); but if the return has to be made on a person's own behalf he can only obtain an extension if he has delivered the best return he can within the time limited (*g*). Persons exempt from tax and, in general, those chargeable in public departments are not liable to penalties (*h*).

In respect of a list of employees to be delivered by a company or other body corporate, the company or body is liable to a penalty as well as the secretary (*i*).

Provisions as to proceedings for recovery are contained in sects. 221—223 (*k*). The Commissioners of Inland

(*z*) Sect. 107 (1) (a); a similar penalty is imposed for non-delivery of a "schedule," *vide infra*, p. 316.

(*a*) Contrast the language of sect. 30, *infra*, p. 347.

(*b*) *A.-G.* v. *Till*, [1910] A. C. 50. Sect. 107 of the Act of 1918 makes clear what sect. 55 of the Act of 1842 did not, that the penalty applies altthough a return has been delivered if it is not correct; but the incorrectness or non-delivery must be due to neglect or wilful refusal.

(*c*) Sect. 132 (1) (b), *infra*, p. 374; sect. 146 (1), *infra*, p. 380.

(*d*) Sect. 30, *vide infra*, p. 294.

(*e*) Sect. 227, *infra*, p. 404.

(*f*) Sect. 107 (3), *infra*, p. 365.

(*g*) Sect. 140 (4), *infra*, p. 378.

(*h*) Sect. 107 (4).

(*i*) Sect. 105 (4), *infra*, p. 364.

(*k*) *Infra*, pp. 403, 404. The Inland Revenue Act, 1890 (53 & 54 Vict. c. 21) applies to proceedings under "any Act relating to inland revenue" (see sect. 21); but as to income tax the ground appears to be covered by the Act of 1918.

Revenue have discretion to mitigate penalties and to stay proceedings (*l*); but the Courts have no discretion to vary the amount of the penalty (*m*).

Rectification of Returns.

Where a person has delivered a return and discovers an omission or wrong statement therein, he may rectify it by delivering an additional return "and shall not thereafter be liable to any proceeding by reason of his omission or wrong statement" (*n*); where a person has not delivered a return within the time limited (*o*) he may deliver it at any time before proceedings have been commenced for recovery of a penalty for such non-delivery. "and thereafter no such proceedings shall be taken" (*p*). It is not clear whether in the former case, the additional return can be delivered even after proceedings have been commenced, so as to cause such proceedings to fail (*q*). But in a case of non-delivery, even if proceedings have been commenced, they may be stayed if the General Commissioners are satisfied that no fraud or evasion was intended (*r*).

If an imperfect return has been delivered and the General Commissioners are satisfied that there is a sufficient reason for this, they may extend the time for delivery (*s*).

These provisions apply to schedules (*t*) as well as to returns.

(*l*) Sect. 222 (1), *infra*, p. 403.

(*m*) *L.-A.* v. *McLaren*, *infra*, p. 294.

(*n*) Sect. 140 (1), *infra*, p. 378.

(*o*) *Vide supra*, p. 288.

(*p*) Sect. 140 (2).

(*q*) In *A.-G.* v. *Till*, *supra*, [1910] A. C. at p. 64, Lord GORELL says that both non-delivery and delivery of an incorrect statement may be remedied both before and after proceedings have been commenced; while Lord SHAW, at p. 68, says "it is admitted" that where an incorrect statement has been delivered, sect. 129 of the Act of 1842 (now sect. 140 of the Act of 1918) "cannot be invoked" after proceedings have been commenced.

(*r*) Sect. 140 (3); this sub-section speaks of "proceedings for recovery of any such penalty," and cannot therefore apply to the case dealt with in sub-sect. (1) which speaks of "any proceeding"; but the discretion given to the Commissioners of Inland Revenue by sect. 222 appears to supply the omission.

(*s*) Sect. 140 (4).

(*t*) *Vide infra*, p. 316.

Where a notice of surcharge (*u*) is given, the person receiving it may within ten days deliver a true return whether he has previously delivered any return or not, and if the surveyor is satisfied with it and with his explanation the person will be charged in "single rate of tax" only (*x*).

Claim for Allowance or Deduction.

A claim for any allowance or deduction (*y*), such as the allowance in respect of earned income or the deductions made from assessable income in ascertaining taxable income, is made in a return, also described as a notice of claim (*z*). The contents of this return are discussed in connection with "total income" (*a*). It is to be delivered within the time limited for the delivery of returns (*b*), unless the General Commissioners for any special reason allow further time. Where one person is assessable on behalf of another (*c*) he may make such a claim on behalf of that other (*d*).

If the surveyor does not object to the claim within a certain time (*e*) the General Commissioners for the division in which the claimant resides (*f*) may allow the claim; if, on the other hand, the surveyor objects in writing they are to hear the claim by way of appeal (*g*).

The above provisions appear to apply to claims made both before and after assessment (*h*) as well as to claims for repayment where the tax has already been paid by deduction or otherwise. In allowing claims for repayment

(*u*) *Vide infra*, p. 308.

(*x*) Sect. 127, *infra*, p. 371.

(*y*) See Chap. I.

(*z*) Act of 1918, s. 27, *infra*, p. 345; Fifth Schedule, No. XVII., *infra*, p. 461; Finance Act, 1920, s. 17, *infra*, p. 469.

(*a*) *Supra*, pp. 22—27.

(*b*) *Vide supra*, p. 288.

(*c*) *Vide supra*, pp. 252 *sqq*.

(*d*) Act of 1918, s. 28 (5), *infra*, p. 346; see also sub-sect. (4).

(*e*) Sect. 27 (3).

(*f*) Sect. 28 (1); see, however, sub-sect. (2).

(*g*) Sect. 27 (5); for the procedure in appeals, see Chap. XVII.; as to appeal on a question of status, see p. 11.

(*h*) See per COZENS-HARDY, M.R., *Brooks* v. *I. R.*, *supra*, p. 280, [1914] 1 K. B. at p. 585. As to claims where husband and wife are separately assessed, see Finance Act, 1920, s. 25 (1) (d), *infra*, p. 473.

the General Commissioners are to send a certificate to the Special Commissioners, and the latter issue the actual order for repayment (*i*).

Penalties in connection with Claims.

The penalty for fraud of any kind by the claimant at any stage of these proceedings is 20*l*., and treble the tax "chargeable in respect of all the sources of his income and as if such claim had not been allowed" (*k*), that is to say, "the penalty is not to be measured by anything [the claimant] has done in returning his income or by what has followed on this return, but by the income itself, the total income for the year of charge," including any income on which tax has already been paid (*l*). The offence of untruly declaring any income, &c. is confined to a false or untruthful declaration; mere inaccuracy is not sufficient (*m*). There is also a penalty for aiding and abetting (*n*).

A person who knowingly makes a false statement or representation for the purpose of obtaining any allowance, reduction or repayment, for himself or another, is liable on summary conviction to six months' hard labour (*o*).

(*i*) Act of 1918, s. 29, *infra*, p. 346. Claims for repayment in connection with relief of other kinds than the allowances and deductions here referred to are dealt with in Chap. XVII.

(*k*) Sect. 30, as to recovery and mitigation of penalties, *vide supra*, p. 291.

(*l*) *L.-A.* v. *McLaren* (1905), 7 F. 984; 5 Tax C. 110, see per Lord KINNEAR at p. 115.

(*m*) *Ibid.*, per Lord KINNEAR at p. 114; contrast the language of sect. 30 with that of sect. 107, *supra*, p. 290.

(*n*) Sect. 30 (2).

(*o*) Sect. 227, *infra*, p. 404.

CHAPTER XVI.

MACHINERY OF ASSESSMENT.

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Authorities and Officials.

For a comprehensive account of the administration of the income tax, the reader is referred to the report of the Royal Commission (*a*). As there stated, the system in many of its practical developments still lacks legal sanction (*b*); and any account that might be attempted here must either be drawn wholly from the Income Tax Act, 1918, and therefore be incomplete; or it must merely repeat what appears in that report. Accordingly, only a very brief statement will here be made of the names and nature of the various authorities, which are somewhat confusing (*c*). Their statutory powers and duties so far as they affect the persons charged with tax, will be considered in connection with assessment, appeal, collection and so forth.

The chief of these authorities, then, is the Board described in the Income Tax Acts as the Commissioners of Inland Revenue, whose seat is at Somerset House, and who have the care and management of the income tax throughout the United Kingdom (*d*).

(*a*) Part IV., sects. I.—IX.; *vide supra*, p. 2.
(*b*) See para. 331.
(*c*) It is based on the sections of the report above referred to.
(*d*) Act of 1918, s. 57.

Bodies of General Commissioners are appointed for different Divisions covering the whole of England, Scotland and Wales (*e*), and are "theoretically responsible in their respective Divisions for the assessment and collection of the tax" (*f*). Their chief importance from the taxpayers' point of view, is that assessments have to be signed and allowed by them, and that they hear all appeals against assessments, except in certain cases where the person charged may choose to be assessed by the Special Commissioners, or to appeal to them.

The Special Commissioners (*g*) are a body of whole-time officials, whose functions extend over the whole country; they have an office in London, but they sit elsewhere as occasion demands. They make, and hear appeals against, assessments under Schedule D at the request of any taxpayer; they assess income tax on railways and on foreign and Colonial dividends paid in this country; and they assess, collect, and hear appeals against, super-tax.

Bodies of Additional Commissioners (*h*) are appointed for most of the Divisions by the General Commissioners; they are unpaid. Their duty is to perform certain preliminary work in connection with Schedule D assessments, before these are sent up to the General Commissioners, who decide upon them.

Inspectors or Surveyors of Taxes (*i*) are permanent officials acting under the orders of the Commissioners of Inland Revenue. The terms "inspector" and "surveyor" are interchangeable; but as, in the sections of the Act which lay down the powers and duties of these officers in relation to persons chargeable they are generally described as "surveyors," that name is used in the ensuing chapters. These statutory powers and duties are many and various; for instance, the inspector or surveyor has a voice in the

(*e*) Sects. 58, 59; the Divisions correspond roughly with the old Land Tax Divisions, Report, para. 339.

(*f*) Para. 338.

(*g*) Sect. 67.

(*h*) Sect. 61.

(*i*) Sect. 75.

making of assessments before they are signed and allowed, appears on appeals, makes all assessments with regard to weekly wage-earners, and initiates action with regard to additional assessments and surcharges. In practice, he is no doubt usually appointed to act for a particular district; but he does not appear to be confined in the exercise of his powers to the district for which he is appointed (*k*).

Assessors are appointed annually for each parish by the General Commissioners of the Division (*l*). They issue forms of return and exercise various preliminary function with regard to assessments under Schedules A, B, D and E.

Collectors (*m*) are appointed annually for each parish, some by the General Commissioners and some by the Commissioners of Inland Revenue. Their duties as collectors are confined to the collection of the tax; but the collector is often in fact the same person as the assessor.

Place of Charge: Schedule A.

The areas of jurisdiction of the various authorities dealing with assessment have been indicated above. Under Schedule A, with certain specific exceptions, the tax charged is assessed and charged upon all properties in the parish in which they are situate (*n*); and outside the County of London (*o*) the occupier must (under penalty) return statements for each parish in which the land is situate, whether he resides there or not, giving separate estimates of value for land belonging to different owners (*p*). If a dwelling-house with any premises occupied therewith is situate in more than one parish, it may be assessed in any one of them at the discretion of the surveyor (*q*).

(*k*) Cf. *R.* v. *Southampton Commrs.*, *infra*, p. 313, [1916] 2 K. B., pp. 260, 261; this point did not arise in the C. A., where the decision was reversed on another ground.

(*l*) Sects. 76, *sqq.*

(*m*) Sects. 80, *sqq.*

(*n*) Sched. A, No. IX. r. 1, *infra*, p. 423.

(*o*) *Vide supra*, p. 48.

(*p*) Rule 5.

(*q*) Rule 8.

Outside the County of London (*q*), lands held under one demise, or occupied by the same person as owner, extending into different parishes in the same Division, may be assessed at the discretion of the Commissioners in either parish (*r*); if the lands extend into more than one Division, they are to be assessed in the Division where the occupier resides (*s*).

An exception is made for certain of the concerns charged under Rule 3 of No. III., by Rule 2 of No. IX. (*t*); but as this rule does not appear to be inconsistent with the rules of Schedule D (*u*), the latter set of rules prevails. Railways are assessed at their head office by the Special Commissioners (*x*).

A special provision as to mines whose produce is sold in a different parish appears in Rule 9 of No. IX. (*y*).

Profits of a manor or royalty extending into more than one parish, may be charged in that where the Court is usually held (*z*). Profits of fines received by the same person may be charged where he resides; or if received by a body of persons, at their head office (*a*).

Place of Charge: Schedule D.

One of the miscellaneous rules (*b*) of Schedule D contains directions as to the place of charge of various classes of persons in various contingencies. There is nothing in the language of the rule to confine its operation to the tax charged under Schedule D; but as separate provision is

(*q*) *Vide supra*, p. 48.

(*r*) Rule 6.

(*s*) Rule 7. Presumably a similar practice would obtain under Sched. B, but there is no direction to that effect.

(*t*) *Infra*, p. 423.

(*u*) See Sched. A, No. III. r. 8, and *vide supra*, p. 71.

(*x*) Sect. 124, *vide infra*, p. 305.

(*y*) *Infra*, p. 424. Mines are charged under rule 2 of No. III., *infra*, p. 410.

(*z*) No. IX. r. 3, *infra*, p. 424; *vide supra*, p. 64.

(*a*) Rule 4, *vide supra*, p. 65.

(*b*) Misc. Rules, r. 4, *infra*, p. 445, takes the place of sects. 106 and 108 of the Act of 1842, and is free from some of the defects which gave rise to the difficulties in *R.* v. *Kensington Commrs., Ex parte Aramayo*, [1916] 1 A. C. 215, and *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259, *infra*, p. 313.

made under Schedules A (*c*) and E (*d*), and as Schedule C provides for taxation at the source (*e*), this would appear to be the intention.

Under this rule (*f*), then, every person who "ordinarily resides" in any parish is chargeable in that parish, but there may also be an alternative place of charge; if he has more than one place of ordinary residence (and is not engaged in a trade or profession) (*g*), he is chargeable at either place; if he has none, he is chargeable at the place where he resides at the time of the issue of the general notices (*h*), or at the first place where he comes to reside after that time.

There is no definition of ordinary residence; but a person does not "ordinarily reside" in a parish where he owns a house in which he has not lived for some years, but which has always been either let furnished or to be let (*i*).

As alternatives to assessment at the place of ordinary residence, a householder (if he is not engaged in a trade or profession) may be assessed in the parish in which his dwelling-house is situate although he does not ordinarily reside there (*j*); and a person carrying on a trade or profession or more than one trade or profession may be assessed in the parish where each is carried on (*k*), even though it is only in part carried on in the United Kingdom; but if the trade is carried on by manufacture he is assessable at the place of manufacture, although the goods are sold elsewhere (*l*).

(*c*) *Vide supra*, pp. 297, 298, as to Schedules A and B.

(*d*) *Vide supra*, p. 238.

(*e*) *Vide supra*, p. 100.

(*f*) See note (*b*), opposite.

(*g*) Rule 4 (3). The reason for the insertion of the words here included in brackets is not clear.

(*h*) *Vide supra*, p. 288.

(*i*) *R.* v. *Aldrington Commrs.* (1916), 85 L. J. K. B. 1753, *infra*, p. 314. The phrase "not ordinarily resident in the United Kingdom" appears in Case IV. r. 2, and Case V. r. 3, *supra*, p. 211.

(*j*) Sched. D, Misc. Rules, r. 4 (2).

(*k*) See Cases I. and II. r. 16, proviso, *supra*, p. 173.

(*l*) Misc. Rules, r. 4 (1); in the second limb of the rule the words "within the United Kingdom" appear to mean "wholly or in part within . . .," although this is not expressed as in the first limb.

In no case does a subsequent removal invalidate an assessment already made (*m*).

Particulars enabling the authorities to fix the place of charge must be given in any income tax return (*n*).

The provision of alternative places of charge does not entitle the authorities to charge any person with tax upon the same income in more than one place; but a person who has two residences, or carries on a trade or profession in different parishes, or in a parish other than that of his ordinary residence, may be called upon to make returns in each place (*o*).

Place of Charge: Schedule E.

Under Schedule E there are special provisions for assessing officers of the Crown, and of departments (*p*), and officers of railway companies (*q*); but any person chargeable under that Schedule (*r*) may also be assessed and charged in any parish in which he ordinarily resides (*s*).

Assessment: Duties of Assessor.

The obligation to make returns, and the notices which make that obligation effective, have been dealt with in Chapter XV. The assessor delivers the returns received to the General Commissioners, together with certain lists (*t*), except where the return is made by a person chargeable under Schedule D, and is accompanied by a request for assessment by the Special Commissioners (*u*).

If the assessor has not received a return (*x*) from any person liable, he is, to the best of his information and judgment, to make an assessment upon him under Schedule

(*m*) Rule 4 (6).
(*n*) Rule 4 (7).
(*o*) Rule 5.
(*p*) Sched. E, rr. 11, 18, *supra*, pp. 238, 239; see *Pickles* v. *Foster*, *supra*, p. 238.
(*q*) Rule 7, *supra*, p. 238.
(*r*) See Chap. XI.
(*s*) Rule 18 (5), *infra*, p. 451.
(*t*) Sect. 113.
(*u*) *Vide infra*, p. 304.
(*x*) Sect. 112; see also sect. 107 (2).

A, B, or E, if the liability arises under one of them; or if the liability arises under Schedule D, to estimate the profits assessable, and give the person's name and address and other particulars to the Additional Commissioners (*y*).

When a return has been delivered, the assessor is not bound to accept it as correct, as far as Schedules A and B are concerned; for the assessments under these Schedules are to contain the "full and just annual values" (*z*) of the lands, as well as the names of the occupiers and proprietors (*a*). And where no estimate of annual value has been received from the occupier of any lands, or the General Commissioners are not satisfied with it, they may, by a signed order to the assessor or surveyor, authorise him to view the lands with a person of skill named in the order (*b*).

Assessors are to deliver their certificates of assessments under Schedules A, B, and E to the General Commissioners, verified on oath (*c*).

Assessments under Schedules A, B, and E.

The surveyor may examine the assessments made by the assessor under Schedules A, B, and E. After he has examined them, the General Commissioners are to take them into consideration; if the surveyor does not object to them, and the General Commissioners are satisfied that they are correct, they shall sign and allow the assessments; if he objects to any of the assessments, and suggests in writing any error, mistake, omission or fraud, they are to the best of their judgment to rectify it (*d*) and to sign and allow it as rectified (*e*). The surveyor may also in certain circumstances amend (by way of increase) the

(*y*) Sect. 121.
(*z*) See Chap. II.
(*a*) Sect. 110.
(*b*) Sect. 116.
(*c*) Sect. 113; the Act does not say whether the assessor is bound to accept as correct returns of profits chargeable under Sched. E.
(*d*) Sect. 120.
(*e*) It is perhaps permissible to read this into the section, as well as a power to overrule the objection if it is not shown that any rectification is required.

assessment made by the assessor, before it is signed and allowed (*f*).

When an assessment has been signed and allowed, it cannot be altered except upon appeal (*g*).

As soon as the assessment has been signed and allowed, notice thereof must be given by the General Commissioners, either by delivering a copy of the assessment to the assessor for inspection by the persons assessed with a notice of the day of appeal to be affixed at the church door or other public place; or by delivering to each person assessed a notice of the amount of his assessment and of the day of appeal (*h*). The assessment does not become binding so as to impose a charge until it has been signed and allowed, and until notice has been duly given and the time for appealing has expired, and any appeal brought has been determined (*i*). It may be doubted whether it can become binding unless a notice has been delivered (*k*) to the person assessed; the delivery of a copy to the assessor, who is not even required to inform the persons assessed where it can be inspected, can hardly have that effect (*l*).

Appeals are dealt with in Chapter XVII.

Assessments under Schedule D.

Any person chargeable under Schedule D may at his own option be assessed by the Special Commissioners; if

(*f*) Sect. 125 (1) (i) (a); the General Commissioners are not bound to accept the amendment.

(*g*) Sect. 133 (1), *infra*, p. 374.

(*h*) Sect. 134 (1) (2), *infra*, p. 375; this provision is applied to Sched. E assessments by sect. 208, which takes the place of sect. 188 of the Act of 1842: *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 307. Sect. 55 and sect. 57 (3) of the Taxes Management Act, 1880, there referred to are replaced by sect. 216 (2) and sect. 136 (1) of the Act of 1918.

(*i*) *Berry* v. *Farrow;* and cf. *R.* v. *Southampton Commrs.*, *infra*, p. 304.

(*k*) As to the method of delivery, see sect. 220 (4), *infra*, p. 402.

(*l*) The proviso to sect. 216 (2), *infra*, supports this view. It is not a notice of the assessment, but a notice of the day of appeal, that is to be affixed at the church door under sect. 134 (2) (a). *Berry* v. *Farrow* does not decide the point, because there no notice of any kind had been given; it was unsuccessfully contended that none was necessary.

he desires this he must give notice to the assessor in making his return (*m*).

Apart from cases in which this option is exercised, the returns and the assessor's estimates (*n*) where no return has been received, are to be laid before the Additional Commissioners (*o*), who are to consider them after they have been examined by the surveyor (*p*). If they are satisfied with the return and the surveyor makes no objection to it, they are to direct an assessment to be made in accordance with the return; but the surveyor, if he is dissatisfied with their determination (although he made no previous objection) can require the Additional Commissioners to state a case for the opinion of the General Commissioners (*q*). If no return, or an unsatisfactory return, has been delivered, or if the surveyor makes an objection in writing, the Additional Commissioners are to make an assessment according to their own judgment (*r*). They may refer any return to the General Commissioners without making an assessment (*s*), and the surveyor can ask for an amendment of any assessment made by the Additional Commissioners, at any time before it leaves their hands (*t*). If, when an assessment has been made by them, the surveyor makes an objection in writing, they are to certify it, with their reasons for making the assessment, to the General Commissioners (*u*); and the surveyor must give notice to the person assessed so that he may appear before the General Commissioners (*x*).

As the proceedings described in sect. 121 are from time to time completed, the assessments are entered in books,

(*m*) Sect. 123, *infra*, p. 369.
(*n*) Sect. 112 (b), *vide supra*, p. 300.
(*o*) Sect. 121 (1).
(*p*) Sect. 121 (2).
(*q*) Sect. 121 (3).
(*r*) Sect. 121 (4); see also sect. 107 (2).
(*s*) Sect. 121 (5).
(*t*) Sect. 121 (6).
(*u*) Sect. 121 (7); it is difficult to read this provision with that for requiring the Additional Commissioners to state a case contained in sub-sect. (3), proviso (i), (ii).
(*x*) Sect. 121 (8); as to service, see sect. 220 (5), *infra*, p. 402.

signed by the Additional Commissioners, and delivered to the General Commissioners; notice of such delivery is to be given to the surveyor; and when fourteen days have expired after the surveyor has had such notice, a notice of assessment is to be given to the person assessed (*y*). The person assessed is entitled to appeal within twenty-one days of the date of the notice of assessment (*z*); and a general notice limiting a reasonable time for hearing appeals is to be given by being fixed up in the General Commissioners' office, or left with their clerk, and also affixed to the church door (*a*).

After the time for hearing appeals has expired—and in any case in which notice of appeal has been given, after the appeal has been determined—the assessments are to be signed and allowed by the General Commissioners (*b*). Until this has been done, the taxpayer is not charged, and there is no liability upon him (*c*). "The acts of the assessors and Additional Commissioners are no more than subordinate and preliminary. The assessments have no operation until they have been signed and allowed by the General Commissioners" (*d*).

Appeals are dealt with in Chapter XVII.

Assessment under Schedule D by the Special Commissioners.

Where a person chargeable has given notice in his return that he requires to be assessed by the Special Commissioners (*e*), the assessor forwards the return to the surveyor; and he, after examining the return, is to make an assessment to the best of his judgment, and forward it to the Special Commissioners, who after examining it shall

(*y*) Sect. 122, *infra*, p. 369; cf. *Berry* v. *Farrow*, *supra*, p. 302; as to the method of serving a notice of assessment, see sect. 220 (4), *infra*, p. 402.

(*z*) Sect. 136 (1), *vide infra*, p. 314.

(*a*) Sect. 134 (3).

(*b*) Sect. 122 (3).

(*c*) *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259, *infra*, p. 307; and cf. *Berry* v. *Farrow*, *supra*, p. 302.

(*d*) *Kensington Commrs.* v. *Aramayo*, [1916] 1 A. C. 215, per Lord WRENBURY at p. 227.

(*e*) *Vide supra*, p. 290.

sign and allow such an assessment as appears to them just and proper (*f*). The assessor merely forwards the request and the return to the surveyor, and there are no proceedings before either the Additional or the General Commissioners. An appeal lies against such an assessment to the Special Commissioners themselves (*g*); and the liability arises only when the assessment has been signed and allowed, the time for appeals has expired, or an appeal brought has been determined, and the Special Commissioners have notified the person charged of the amount of the charge (*h*).

Railway Assessments.

Assessments on a railway company are made by the Special Commissioners (*i*), both in respect of "annual value" or "profits" (*k*), and in respect of offices and employments of profit (*l*).

Weekly Wage-Earners.

Where weekly wage-earners are employed by way of manual labour, they are assessed quarterly in respect of the wages of that employment (*m*). The assessment is made by the surveyor without the intervention of any other body or person; he has to serve a notice of assessment on the person assessed, who may first object, and if he is unable to agree with the surveyor, appeal to the General Commissioners; any allowances and deductions are to be allowed and deducted quarterly; additional assessments may be made within three years after the expiration of the year of assessment (*n*).

(*f*) Sect. 123 (1), (2), *infra*, p. 369.
(*g*) *Vide infra*, p. 311.
(*h*) Sect. 123 (3).
(*i*) Sect. 124, *infra*, p. 370.
(*k*) These terms are here synonymous; a railway is assessed under No. III. rr. 3 and 8, according to the rules of Sched. D; *vide supra*, pp. 71, 89. As to returns and place of charge, *vide supra*, pp. 289, 298.
(*l*) Sched. E, r. 7, *vide infra*, p. 448.
(*m*) *Vide supra*, p. 174.
(*n*) Regulations 2—13, *infra*, pp. 482, 483.

Errors in Assessments: Double Assessment.

Errors of form are not to invalidate "assessments" or "charges"; provided that a notice of charge (*o*) has been duly served on the person intended to be charged, and that that notice contains in substance and effect the particulars on which the charge is made (*p*).

But if a person has, either on his own account or on another's, been assessed twice over for the same year for the same cause and on the same account, he may apply to the General Commissioners for the Division where the second assessment was made, and have it vacated; there is no limit of time for making the application; the Commissioners of Inland Revenue have a similar power to that of the General Commissioners; and if it is proved to the Commissioners of Inland Revenue that payment has been made on both assessments, they shall order repayment (*q*).

Additional First Assessments.

If the surveyor "discovers" that in the assessments thus made any properties or profits chargeable to tax have been omitted, that any person has not been assessed, or has been undercharged, or has obtained any authorised allowance, deduction or relief, or that any person has not made a return, or has not made a full return, an "additional first assessment" may be made (*r*). Legal evidence of any of these matters is not necessary as a preliminary; but there must be information before the surveyor "which would enable him, acting honestly, to come to the conclusion" that such a state of facts exists (*s*). The

(*o*) As to service of notice of assessment or "charge," *vide supra*, p. 302.

(*p*) Sect. 216, *infra*, p. 401. The section presents great difficulties; as to the various meanings of "assessment" and "charge" in these Acts, see *Kensington Commrs.* v. *Aramayo*, *supra*, p. 304, per Lord WRENBURY, [1916] 1 A. C. at p. 227. The writer is unable to suggest what is meant by "hearing and determining" a charge.

(*q*) Sect. 151, *infra*, p. 382.

(*r*) Sect. 125, *infra*, p. 370.

(*s*) *R.* v. *Bloomsbury Commrs.*, [1915] 3 K. B. 768, *infra*, p. 307, following the decision of the K. B. D. on this point in *R.* v. *Kensington Commrs.*, [1913] 3 K. B. 870, *vide infra*, p. 308.

question of legal proof only arises if and when the additional assessment becomes the subject of appeal.

Where the discovery is made after the first assessments have been signed and allowed (*t*), the surveyor certifies the particulars (where the tax is chargeable under Schedule A, B, or E) to the General Commissioners, who then (it appears) have jurisdiction to determine the facts after considering the particulars certified to them, and to sign and allow such an additional first assessment as they find to be correct (*u*). Such an additional assessment is subject to appeal (*x*), as in the case of a first assessment; and the liability is imposed at the same time as in that case (*y*).

Where the tax is chargeable under Schedule D (*z*), the Additional Commissioners (*a*) "shall make . . . . an additional first assessment . . . . in such a sum as according to their judgment ought to be charged." Such assessment is subject to objection by the surveyor (*b*) and to appeal (*c*). The additional first assessment having been made by the Additional Commissioners, requires to be signed and allowed by the General Commissioners in the same way as a first assessment, and the liability is imposed at the same time as in that case (*c*); the General Commissioners have jurisdiction to determine the facts (*d*).

An additional first assessment may be made not later than three years after the expiration of the year of assessment (*e*). It was at one time held to be sufficient

(*t*) If they have not been signed and allowed, the surveyor may himself amend them, *vide supra*, p. 301.

(*u*) Sect. 125 (1) (i) (b); see *R.* v. *Bloomsbury Commrs.*, per Lord READING, L.C.J., [1915] 3 K. B. at p. 782.

(*x*) See Chap. XVII.

(*y*) *Berry* v. *Farrow*, [1914] 1 K. B. 632, *supra*, p. 302.

(*z*) Sect. 125 (1) (ii).

(*a*) Moved thereto, of course, by the surveyor; but this is not expressed here as in the previous paragraph.

(*b*) See sect. 121 (7), and p. 303, *supra*.

(*c*) *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259, *supra*, p. 304.

(*d*) See *R.* v. *Bloomsbury Commrs.*, per Lord READING, L.C.J., [1915] 3 K. B. at p. 782.

(*e*) Sect. 125 (2).

under Schedule D if the assessment is made by the Additional Commissioners within the time limited (*f*); but this decision cannot stand now that it is clear that the action of the Additional Commissioners imposes no liability on the subject (*g*); in order to be valid, therefore, an additional first assessment under Schedule D must be signed and allowed by the General Commissioners within the three years. Under Schedule D, as has been seen (*h*), the person charged receives notice before an assessment is signed and allowed; under Schedules A, B and E he does not receive such a notice until after signing and allowance (*i*), and it is submitted that under these Schedules, not only must the additional first assessment have been signed and allowed within the three years, but notice must have been given to the person charged.

Surcharges.

A surcharge is another form of retarded assessment; this method of procedure gives the revenue authorities somewhat wider powers than they possess in proceeding by way of additional first assessment; but it is available only if the person in question has not been charged to income tax for the year (*k*). If the surveyor "discovers" (*l*) that this is so, he may surcharge the person liable.

He can only do so, and must certify the General Commissioners that he has done so (*m*), within three years after the expiration of the year of assessment for which he

(*f*) *R.* v. *Kensington Commrs.*, [1913] 3 K. B. 870; the judgment was reversed on other points, [1914] 3 K. B. 429; [1916] 1 A. C. 215, but not on this.

(*g*) *R.* v. *Southampton Commrs.*, *supra.*

(*h*) *Vide supra*, p. 304.

(*i*) *Supra*, p. 302; *Berry* v. *Farrow.*

(*k*) Sect. 126 (1), *infra*, p. 371. The Royal Commission in para. 427 of their report say that the power of making a surcharge is "confined to cases where there has been no previous assessment on the source of income in question"; but the Act makes no reference in this connection to different sources of income, or different Schedules; and the income tax is one tax, on whatever source of income it may be charged: *A.-G.* v. *London County Council*, *supra*, p. 3.

(*l*) The word here doubtless bears the same meaning as in sect. 125 (1), *vide supra*, p. 306.

(*m*) Sects. 126 (2), 129 (5).

ought to have been charged; the person liable is entitled to notice (*n*), and as the date of service has to be stated in the certificate (*o*) the notice also must be given within the time limited.

Within ten days from the service of the notice, the person to whom it has been given may, whether he has previously made a return or not, deliver to the surveyor a correct return, or give him notice in writing that he abides by his previous return; but he must annex to the return or notice a declaration signed and attested by witnesses (*p*).

In the meantime, the surveyor has certified the surcharge to the General Commissioners (*q*); but they can take no action till the ten days have expired (*r*). Service of the notice must be proved on oath (*s*). If a return or notice and declaration have been delivered within the ten days, and the surveyor certifies his satisfaction to the General Commissioners, they are to charge the person on the amount set out in the return "in single rate of tax" (*t*).

If, however, a return or notice by the person surcharged and declaration have been delivered within the ten days, and the surveyor serves a notice of objection on the person surcharged, and certifies to the General Commissioners the cause of his objection, the delivery of the return or notice and declaration operates as a notice of appeal to them against the surcharge (*u*). And even if the return, notice or declaration have not been delivered within the ten days, the person surcharged may appear before the General Commissioners personally or by agent "on the day appointed for hearing appeals against surcharges," and

(*n*) Sect. 126 (2); as to the method of service, see sect. 220 (5), *infra*, p. 402.

(*o*) Sect. 126 (6).

(*p*) Sect. 127 (1), (2); the heads of this declaration, which might almost be called a confession, will be found in sub-sect. (2) (a)—(e); penalties for fraud are provided in sub-sect. (3).

(*q*) Sect. 126 (2); see also sect. 129 (6).

(*r*) Sect. 126 (4).

(*s*) Sect. 126 (3) and (6).

(*t*) Sect. 127 (4); the Commissioners are presumably to sign and allow a supplementary assessment on the surcharge as amended, see sect. 130 (2) (a).

(*u*) Sect. 128, read with sect. 129 (1).

deliver a return and declaration, in which case the General Commissioners may hear his appeal (*x*).

Appeals are to be heard as in the case of first assessments (*y*); the burden of proof is on the person surcharged and it is for him to show that the contents of the certificate and notice of surcharge are incorrect (*z*).

In certain circumstances (connected with the date and notice of appeal meetings) (*a*) the Commissioners are to sign and allow the certificate first, and to hear and determine appeals afterwards (*b*).

Upon appeal, the General Commissioners may either increase or reduce the surcharge (*c*); if it is allowed in whole or in part, the assessment is made in treble the rate of tax, unless they find that the surveyor might have amended the assessment by means of the original return, that there was no intent to defraud on the part of the person charged, that he was prevented by sufficient cause from making an amended return, or that there was reasonable cause of doubt as to his liability or as to the amount of it (*d*).

If there is no appeal (*e*) the General Commissioners are to confirm the certificate of surcharge (*f*); they have apparently no power to increase or reduce the amount, nor is there any power to levy treble tax (*g*), unless the case is one of default in connection with returns and so comes within the purview of sect. 107 (*h*).

(*x*) Sect. 129 (2); "may" here seems to mean "must."
(*y*) Sect. 137 (6) (a), *infra*, p. 376; see Chap. XVII.
(*z*) Sects. 126 (5), 137 (4).
(*a*) Sect. 137 (6) (a) should be read with sect. 134 (3) and sect. 135.
(*b*) Sect. 129 (4); it is difficult to see the object of this provision.
(*c*) Sect. 137 (4), (5).
(*d*) Sect. 137 (6) (b).
(*e*) See above as to what constitutes an appeal.
(*f*) Sect. 129 (3).
(*g*) Sub-sects. (4), (5) and (6) (b) of sect. 137 apply only where there is an appeal.
(*h*) *Vide supra*, p. 290.

CHAPTER XVII.

APPEALS AND OTHER REMEDIES OPEN TO THE SUBJECT.

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Right of Appeal.

ANY person aggrieved by an assessment upon him has a right of appeal against that assessment, under whatever Schedule it is made (*a*). And any owner or other person in receipt of rent for lands, although he is not the occupier, who is aggrieved by the amount of the Schedule A assessment, may appeal against it (*b*). Appeals in general are brought before the General Commissioners (*c* ; but if an assessment under Schedule D has been made by the Special Commissioners (*d*), the appeal is brought before that body (*e*). And even if the Special Commissioners have not made the assessment, the person assessed may elect to have his appeal brought before them (*f*), in the case of an assessment under Schedule D, and in the case of

(*a*) Sects. 136, 147, 148, *infra*, pp. 375, 381; Parts VI. and VII. of the Act of 1918 are obscure; but sect. 136 appears to apply to assessments by whomever made, and under whatever schedule, except those made by the Special Commissioners, which are dealt with in sect. 147.

(*b*) Sect. 136 (2); he is given a right of appeal because the occupier can deduct tax against him, *vide supra*, p. 55; but a mortgagee, chargee, or annuitant, though he must also submit to a deduction, is not expressly given such a right.

(*c*) Sect. 136 (1).

(*d*) *Vide supra*, p. 304.

(*e*) Sect. 147.

(*f*) Sect. 148.

an assessment in respect of any of the quarries or mines described in Rules 1 and 2 of No. III. of Schedule A (*g*).

These rights extend so as to allow appeals against first and additional first assessments, against objections by the surveyor, and against surcharges (*h*).

An appeal lies against an assessment, even if it is based on an inaccurate return made by the appellant (*i*).

A claim (*k*) for any allowance or deduction, if the surveyor objects to it in writing, is heard by way of appeal, by the General Commissioners (*l*). Such an appeal can apparently be heard by the Special Commissioners if the assessment is under Schedule D; except that any claimant for total exemption on the ground that his income does not exceed 130*l*. (*m*) can appeal only to the General Commissioners.

Appeal in most cases the only remedy.

Where there is a right of appeal, and the person assessed fails to avail himself of it, he cannot afterwards bring a petition of right to recover the money overpaid (*n*). There are certain specific cases in which application can be made for subsequent adjustment or repayment; but these are very limited in their scope (*o*). An assessment not appealed against cannot be challenged in bankruptcy proceedings (*p*).

(*g*) *Vide supra*, pp. 69, 81. It is very difficult to see any reason why the concerns described in rule 3 (*supra*, pp. 69, 84 *sqq.*), other than railways, are excluded; railways are always assessed by the Special Commissioners (*vide supra*, p. 305), and consequently appeals go before them by virtue of sect. 147. In at least one reported case, *Humber Conservancy Board* v. *Bater*, [1914] 3 K. B. 449, the Special Commissioners dealt on appeal with a concern assessed under rule 3.

(*h*) Sects. 136, 137, 148. As to these various forms of assessment, see Chap. XVI.

(*i*) *Holborn Viaduct Land Co., Ltd.* v. *The Queen* (1887), 2 Tax C. 228, *infra*, p. 327.

(*k*) *Vide supra*, p. 293.

(*l*) Sect. 27 (5), *infra*, p. 346, which replaces sect. 164 of the Act of 1842; see per SWINFEN EADY, L.J., in *Furtado* v. *City of London Brewery Co.*, *infra*, p. 325, [1914] 1 K. B. at p. 714.

(*m*) Act of 1918, s. 148 (3); this provision seems obsolete since the passing of the Finance Act, 1920, s. 18, *vide supra*, p. 12.

(*n*) *Holborn Viaduct Land Co.* v. *The Queen*, *supra*.

(*o*) *Vide infra*, pp. 322—326.

(*p*) *In re Calvert*, [1899] 2 Q. B. 145.

The Commissioners hearing an appeal have jurisdiction to determine whether the preliminary state of facts exists which enables an assessment to be made, *e.g.*, whether the appellant is carrying on a trade in the United Kingdom so as to be chargeable under Schedule D(*q*); and (unless the Commissioners decide without any evidence on which they could honestly do so) the remedy for any person aggrieved by an assessment, even if he is aggrieved by reason of his not being chargeable at all, is by appeal and case stated; the remedy is not by prohibition(*r*). An action would not appear to lie for a declaration which would prevent the Commissioners from exercising their discretion upon an appeal(*s*).

Prohibition Lies in Certain Cases only.

A particular body of Commissioners cannot, however, by a decision which is wrong either in fact or in law, give themselves jurisdiction to assess a person, whom they have no power to assess by reason of the place (*t*) where he should be charged not being within their area of jurisdiction. A writ of prohibition may issue forbidding those Commissioners to assess him. Where the person assessed could in law only be assessed in respect of certain profits by a certain body of Commissioners, it was held that prohibition would lie to prevent another such body from allowing or confirming an assessment made upon him in respect of those profits(*u*). Even if the question is one of fact as to whether the person assessed ordinarily resided at material times within the division of certain Commissioners,

(*q*) *Vide supra*, p. 111.

(*r*) *R.* v. *Clerkenwell Commrs.*, [1901] 2 K. B. 879; *R.* v. *Bloomsbury Commrs.*, [1915] 3 K. B. 769, *supra*, p. 306.

(*s*) Cf. *Smeeton* v. *A.-G.*, [1920] 1 Ch. 85.

(*t*) *Vide supra*, pp. 297 *sqq.*, as to place and method of assessment.

(*u*) *R.* v. *Kensington Commrs., Ex parte Aramayo*, [1914] 3 K. B. 429; the decision was affirmed in H. L., [1916] 1 A. C. 215, but this point was not there argued; similar proceedings were taken in *R.* v. *Southampton Commrs.*, [1917] 1 K. B. 259. Sched. D, Misc. Rules, r. 4, which takes the place of sects. 106 and 108 of the Act of 1842, differs widely from those sections, and the questions as to the legality of the assessments which arose in the cases cited are no longer open; *vide supra*, p. 298, note (*b*).

the Court will, if there is conclusive evidence that he did not, prohibit those Commissioners from proceeding on the assessment. The person assessed is not bound to wait for his remedy until his assessment is confirmed (*x*).

If there is any suppression of material facts in the affidavit on which the rule for a prohibition is moved, the Court will refuse the writ (*y*).

Time for Appealing: Notice of Appeal.

Notice of appeal must be given within twenty-one days after the date of the notice of assessment, objection or surcharge; it must be given in writing to the surveyor (*z*). If the person assessed elects to appeal to the Special Commissioners, this must be stated in the notice (*a*). There is no provision requiring the grounds of appeal to be stated in the notice, but it is not unusual to do so.

Special provision is made for extension of time in cases of absence, sickness or other reasonable cause (*b*), as well as for cases of removal (*c*).

Procedure on Appeals.

The General Commissioners are bound to give general notice (as well as a notice to persons assessed) of the day for hearing appeals from assessments under Schedules A and B; with regard to assessments under Schedule D they are to publish a general notice limiting a reasonable time for hearing appeals (*d*). But any direction contained in these notices cannot restrict the right of the subject to appeal within the time allowed by sect. 136 (*e*). The surveyor is also entitled to notice of appeal meetings (*f*).

(*x*) *R.* v. *Aldrington Commrs.*, [1916] W. N. 276; 85 L. J. K. B. 1753.
(*y*) *R.* v. *Kensington Commrs., Ex parte Polignac*, [1917] 1 K. B. 487.
(*z*) Sects. 136 (1), *infra*, p. 375; 148 (1), *infra*, p. 381. See note (*a*) on p. 311, *supra*; and the next paragraph.
(*a*) Sect. 148 (1).
(*b*) Sect. 136 (3).
(*c*) Sect. 136 (4).
(*d*) Sect. 134.
(*e*) *Vide supra.*
(*f*) Sect. 135.

Every appellant is entitled to notice of the day for hearing appeals (*g*).

The Commissioners may permit the appellant or the Revenue officers to be represented (either *vivâ voce* or in writing) by counsel or solicitor, or may hear any member of an incorporated society of accountants. If the General Commissioners refuse to do so, the appellant may transfer his appeal to the Special Commissioners, who are obliged to hear the barrister, solicitor or accountant (*h*); the Revenue officers have no such power of transfer.

The surveyor and assessor are entitled to be present at the hearing of the appeal and to give reasons in support of the assessment, as well as to be present when judgment is given; but they have no right to be present while the Commissioners deliberate in the absence of the appellant or his representative (*i*).

It is for the appellant to show that the assessment appealed against is excessive; the Commissioners may examine the appellant on oath or affirmation and may take other lawful evidence adduced by either party (*k*). They may summon witnesses and examine them on oath (*l*). They are not bound to administer an oath to the appellant if he has informed them of the nature of his evidence and they place no reliance on it; nor is his oath conclusive by itself (*m*). On the other hand, the mere refusal to produce books does not of itself justify them in deciding against the appellant (*n*). They are entitled to insist on production of accounts where the ultimate object of certain expenditure is in question; but an appeal in which they had decided against the appellant because those accounts were not

(*g*) Sect. 137 (1).

(*h*) Sect. 137 (3). Apart from this distinction the Special Commissioners have the same powers and duties in hearing appeals as the General Commissioners: sect. 67 (2), (3).

(*i*) *R.* v. *Brixton Commrs.* (1913), 6 Tax C. 195.

(*k*) Sect. 137 (4), (2) (b).

(*l*) Sects. 144, 145.

(*m*) *R.* v. *Chew* (1894), 71 L. T. 541; 3 Tax C. 289.

(*n*) *Ibid.*, per RIGBY, J.

produced, was remitted for rehearing after production of the accounts (*o*).

The Commissioners are not obliged to hear all evidence that may be tendered; if they come to the conclusion that certain evidence will not assist them, they may refuse to hear it (*p*), but they must not make any such general rule as that they will never hear expert evidence (*q*).

In an appeal against an assessment by Additional Commissioners or in dealing with an objection by the surveyor to such an assessment, the General or Special Commissioners may issue a precept to the appellant to deliver a schedule of particulars in relation to certain specified matters (*r*); penalties are provided for failure (*s*), as well as opportunities for amendment (*t*), for objection by the surveyor (*u*) and for answers to further precepts (*x*). The schedule delivered is not necessarily conclusive (*y*).

When the annual value of lands is in dispute in an appeal under Schedule A or B, the appellant may require a valuation to be made by a person of skill; or the General Commissioners may direct it to be made of their own initiative. Such a valuation when verified on oath by the person who made it is conclusive of the annual value (*z*). If no such valuation is made, the Commissioners are to determine the question to the best of their judgment (*z*), and are entitled to avail themselves of their personal knowledge of the value of property in the district and of the nature and history of the property in question (*a*).

The Commissioners may confirm or alter the assess-

(*o*) *Grahamston Iron Co.* v. *Crawford*, [1915] S. C. 536; 7 Tax C. 25.

(*p*) *R.* v. *Offlow Commrs.* (1911), 27 T. L. R. 353. In *Gundry* v. *Dunham*, however (*infra*, p. 317), SWINFEN EADY, M.R., expressed a somewhat wider view of the duty of the Commissioners to hear evidence tendered.

(*q*) *R.* v. *Offlow Commrs.*, per Lord ALVERSTONE, L.C.J.

(*r*) Sect. 139, *infra*, p. 377.

(*s*) Sect. 139 (3); sect. 146 (2), *infra*, p. 380.

(*t*) Sect. 140, *vide supra*, p. 292.

(*u*) Sect. 141.

(*x*) Sect. 143.

(*y*) *R.* v. *Chew*, *supra*.

(*z*) Sect. 138, *infra*, p. 377. This section does not apply within the County of London, where the poor rate valuation list is conclusive; *vide supra*, p. 48.

(*a*) *Stocks* v. *Sulley* (1899), 1 F. 1020; 4 Tax C. 98; *supra*, p. 47.

ment (*b*); they may either reduce it or increase it (*c*). If they increase the assessment above the amount shown in the appellant's return or schedule, they may charge him with treble duty on the excess, unless they are satisfied that he has not been fraudulent or grossly or wilfully negligent (*d*). A similar penalty applies if he has neglected or refused to deliver a return or schedule (*e*). Treble tax is also leviable on a surcharge upheld on appeal, if there are no extenuating circumstances (*f*).

The determination of the Commissioners on an appeal is final, and the assessment cannot be altered thereafter save where a case is required to be stated by them (*g*); a withdrawal of the appeal by the appellant is not a determination by the Commissioners (*h*). This provision is of course subject to the various rights of application for adjustment or repayment (*i*).

The general principles upon which the Courts will or will not interfere by *mandamus* or *certiorari* with the exercise of a judicial or quasi-judicial jurisdiction (*k*) apply to decisions of General or Special Commissioners on appeals under the Income Tax Acts. If the Commissioners have addressed their minds to the right question with which they are empowered to deal, the Courts will not interfere and will not consider whether that question has been answered rightly or wrongly (*l*).

Case Stated.

Where any question of law arises in an appeal, either the appellant or the surveyor "if dissatisfied with the deter-

(*b*) Sect. 137 (4), sect. 142. In reading the latter section it should be borne in mind, as pointed out above, that the schedule is not conclusive.

(*c*) Sect. 137 (5).

(*d*) Sect. 146 (1) (a); *vide supra*, p. 291.

(*e*) Sect. 146 (2).

(*f*) Sect. 137 (6). As to surcharges, *vide supra*, p. 308.

(*g*) Sect. 133 (2), (3), *infra*, p. 374.

(*h*) *Gundry* v. *Dunham* (1915), 7 Tax C. 12, *supra*, p. 46.

(*i*) *Vide infra*, p. 322.

(*k*) See, *e.g.*, *Board of Education* v. *Rice*, [1911] A. C. 179.

(*l*) Cf. *R.* v. *City of London Commrs.*, *infra*, p. 323. *Mandamus* where no appeal is provided is considered *infra*, p. 324.

mination as being erroneous in point of law," is entitled to have a case stated for the opinion of the High Court (*m*). For this purpose the dissatisfied party must declare his dissatisfaction to the Commissioners who heard the appeal (*n*); and must apparently do so immediately the determination is pronounced. After that declaration and within twenty-one days after the determination, the dissatisfied party must by notice in writing to their clerk "require the Commissioners to state and sign a case for the opinion of the High Court thereon"; he must also pay the clerk a fee of 1*l.* (*o*). When the case is stated and signed, the party requiring it must transmit it to the High Court within seven days after receiving it, and must at or before transmission send a copy to the other party with a notice in writing that the case has been stated on his application (*p*). The terms of the case are, in practice, usually agreed between the parties (*q*), being drafted in the first instance by the party requiring it, but the Commissioners are by no means bound to allow this, and the parties are in their hands as to the manner in which the case is stated (*r*).

The tax has to be paid nevertheless to the amount determined by the Commissioners; but if the High Court alters that amount, the excess paid is refunded with such interest as is allowed by the High Court, and any under-payment is recovered as arrears of tax, of course without penalty (*s*).

Procedure in the High Court on a Case Stated.

In England, a case stated by Commissioners is dealt with in the King's Bench Division on the Revenue Side, and the Rules of the Supreme Court do not apply (*t*), except as provided by Order LXVIII., Rule 2. The case

(*m*) Sect. 149, *infra*, p. 381.
(*n*) Sect. 149 (1) (a).
(*o*) Sect. 149 (1) (b), (c).
(*p*) Sect. 149 (1) (d), (e).
(*q*) See *Manchester Corpn.* v. *Sugden*, [1903] 2 K. B. 171, *infra*.
(*r*) *Vide infra*, p. 320.
(*s*) Sect. 149 (4); as to recovery of arrears, *vide infra*, p. 335.
(*t*) R. S. C., Ord. LXVIII., r. 1.

is filed in the King's Remembrancer's Department, where the correct procedure should be ascertained (*u*). Written points for argument are delivered by each party, but are not treated as pleadings binding upon the party.

The case is heard by a single Judge (*x*). There is an appeal to the Court of Appeal and the House of Lords (*y*). In Scotland an appeal lies from the Court of Session as the Court of Exchequer in Scotland to the House of Lords (*y*).

The High Court may reverse, affirm, or amend the determination, remit the matter to the Commissioners, or make such other order as it deems fit; or may return the case for amendment before giving judgment (*z*). As to costs, the Court may also make such order as seems fit (*a*). In England, the costs may include the costs of settling the case, incurred before it is filed (*b*); the contrary has been held in Scotland (*c*).

What is a Question of Law?

In an appeal the Commissioners are the sole judges of fact (*d*); and the function of the High Court in dealing with a case stated is only to hear and determine any question of law arising on the case (*e*); it will not deal with any point that is not raised by the case stated (*f*). Upon cases stated under the Income Tax Acts as upon

(*u*) It is founded on the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21), the Rules made thereunder dated June 22nd, 1860, and R. S. C., Ord. XXXIV. (Special Case) so far as this is applicable.

(*x*) Owing to Ord. LIX. r. 1 (d) having been annulled by R. S. C., July, 1901, r. 8.

(*y*) Sect. 149 (3). In England Ord. LVIII. applies, and notice of appeal to the C. A. must be given before the expiration of fourteen days from the time when the order of the K. B. D. is signed, entered, or otherwise perfected, Ord. LVIII. rr. 1, 15, 9.

(*z*) Sect. 149 (2) (a), (b).

(*a*) Sect. 149 (2) (a). R. S. C., Ord. LXV. (costs) applies as far as applicable.

(*b*) *Manchester Corporation* v. *Sugden, supra.*

(*c*) *Scottish Union, &c.* v. *Smiles* (1839), 16 R. 624.

(*d*) See, *e.g.*, *De Beers Consolidated Mines* v. *Howe*, [1906] A. C. 455, *supra*, p. 117; *P. & O. S. N. Co.* v. *Leslie* (1899), 4 Tax C. 177; *British India S. N. Co.* v. *Leslie* (1900), 4 Tax C. 257, *supra*, p. 160.

(*e*) Sect. 149 (2) (a), *infra*, p. 382.

(*f*) *Bray* v. *Lancashire JJ.* (1889), 22 Q. B. D. 484, *supra*, p. 38.

special cases of other kinds, there has been frequent controversy (*g*), as to whether, and to what extent, the matter is concluded by the finding of the tribunal which stated the case. A mere statement in the case that a conclusion of the Commissioners is a finding of fact does not preclude the High Court from reviewing that conclusion, if it is in truth a finding of law. Further, even if the case contains a conclusion which is a finding of fact, the High Court will enquire whether there was any evidence upon which it was possible for the Commissioners to come to that conclusion; that is a question of law; but the Court will not decide the question of fact whether upon the evidence that finding is correct (*h*).

A case stated is very liable to one of two opposite dangers; either that one party may be "stated out of Court" by the findings of fact, or that, where the findings fall short of stating one party out of Court, it may be contended that they fail to afford any ground for his contention of law. An instance of the latter kind occurred where the Commissioners had recorded a number of findings of fact with regard to deductions claimed by brewers in ascertaining the profits of their trade; it was contended on the part of the Crown that these findings did "not amount together to a finding that the sums claimed to be deducted were wholly and exclusively laid out or expended for the purposes of the appellants' trade," that is to say, to a finding in the precise words of Rule 1 of the First and Second Cases of Schedule D of the Act of 1842 (*i*); and that therefore the case was concluded against

(*g*) The cases selected for citation here are cases in which the functions of the Court on hearing a case stated have been expressly considered; but the great majority of cases cited throughout this book have arisen by way of case stated, and afford illustrations of the exercise of those functions.

(*h*) *New Zealand Shipping Co.* v. *Stephens* (1908), 5 Tax C. 553, *supra*, p. 113; *Gramophone and Typewriter, Ltd.* v. *Stanley*, [1908] 2 K. B. 89, *supra*, p. 121; *American Thread Co.* v. *Joyce* (1911), 6 Tax C. 1, 163, *supra*, p. 118. The judgment of HAMILTON, J., in the case last cited, which was adopted in terms by the Court of Appeal and House of Lords, contains a complete exposition of this matter.

(*i*) *Usher's Wiltshire Brewery* v. *Bruce*, [1915] A. C. 433, *supra*, p. 155. See now Sched. D, Cases I. and II. r. 3 (a), *infra*, p. 434.

the appellants. Obviously, if there had been a finding in those precise words, the case would have been concluded against the Crown (*k*). The House of Lords refused the Crown's contention, and Lord ATKINSON said:

"It is for a Court of law to construe these several paragraphs as written documents, just as the Courts of law often have to construe the answers (in writing) of juries to questions put to them by the judge presiding at a trial, or as such Courts have to construe a correspondence between parties litigant to determine whether their letters in the aggregate contain a concluded contract in writing.

"In doing this the tribunal of law does not usurp the jurisdiction of the tribunal of fact, and from facts found by the latter draw a further inference of fact. It merely discharges its proper and exclusive function of construing written documents" (*l*).

The following passages from Lord SUMNER's judgment (*m*) not only deal with that point, but define the province of a Court adjudicating upon a case stated (*n*):—

"The question which arises at the outset of this case is, what facts have the Commissioners found? The jurisdiction of the High Court, and on appeals from it, is by sect. 59, sub-sect. 2 (b), of the Taxes Management Act, 1880 (*o*), to 'hear and determine the question or questions of law arising on a case transmitted under this Act.' This involves the construction of the language of the case stated. It must be interpreted in the light of common knowledge and by the common sense of the language used; but the findings of fact, as such, when ascertained are final. . . .

"All questions that could be raised on the whole case (and they were many) were intended to be left open. I

(*k*) In *Youngs, Crawshay & Youngs, Ltd.* v. *Brooks* (1912), 6 Tax C. 393; the Crown had upon very similar findings submitted to judgment.

(*l*) [1915] A. C. at pp. 449, 450.

(*m*) *Ibid.*, at pp. 465—7.

(*n*) Apart from deciding the question, above referred to, whether there was evidence upon which the finding could be reached.

(*o*) Now sect. 149 (a) of the Act of 1918, *infra*, p. 382.

think that, in the context in which these expressions are used, all alike mean that the disbursements in question, money foregone being properly within these words, were 'money wholly and exclusively laid out or expended for the purposes of such trade,' that is to say, the brewer's trade.

"In the judgment appealed from it is said, 'I can see no such finding of fact in this case.' This is so in terms, but in substance it is otherwise. Furthermore, the judgment seems to say that the question whether a given disbursement is 'wholly or exclusively laid out for the purposes of the trade or concern' is a question of law and not of fact. With this I am not able to agree. Though the answer to the question may itself be an inference from a wide area of facts, it is an answer of fact. There is no suggestion here that the Commissioners found the facts under any mistake in law, including in that term the view, conscious or unconscious, that a fact may be found which there is no relevant evidence to support. . . .

"The questions of law raised are, and are only, whether, on the construction of the Act, the deductions in debate, though 'disbursements or expenses, being money wholly and exclusively laid out or expended for the purposes of the trade' (that is, the brewer's trade), are nevertheless forbidden. I think that the judgment appealed against really finds facts, and does not, as it was supposed to do, rule the law, when it declares that the rents foregone are losses of annual value and not expenses of trade, that the described expenses are moneys laid out partly for the publican's trade, and, therefore, not 'wholly and exclusively' for the brewer's trade, and that such moneys enter into a computation of the profits or gains of the brewer's trade because, in the view of the Court, they also enhance the value of his goodwill" (*p*).

Miscellaneous Applications for Repayment or Adjustment.

There are a number of cases in which the taxpayer is entitled to apply for relief to Commissioners, apart from

(*p*) [1915] A. C. at pp. 465—7.

appeal against assessment. A claim for any allowance or deduction, if the surveyor objects to it, is indeed to be dealt with as an appeal (*q*). But a person who sustains loss in any trade or profession, or in the occupation of lands for purposes of husbandry only, or of woodlands in respect of which he has elected to be charged under Schedule D, may apply to the General or the Special Commissioners for an adjustment of his liability by reference to his loss, and to his income for the year. The application must be made within six months after the year of assessment. The Commissioners on proof to their satisfaction of the loss, and of the payment of tax, are bound to give a certificate entitling the applicant to repayment (*r*). A claim of this kind can be made only in the manner stated, and not by way of appeal (*s*); and the Commissioners in hearing such an application have no power to state a case (*t*). Nor can their decision be challenged by certiorari, if they have addressed themselves to the proper question (*u*).

The Special Commissioners, again, on proof to their satisfaction, must order repayment of tax paid in respect of certain burgh customs in Scotland (*x*), and of certain interest payable on advances by bankers and stock-brokers (*y*).

The exemptions given by sect. 37 to hospitals, public schools and almshouses, and to certain other charitable bodies (*z*), that given by sect. 38 to the British Museum (*a*),

(*q*) Act of 1918, s. 27 (5); *vide supra*, pp. 293, 312.

(*r*) Sect. 34; *vide supra*, p. 178.

(*s*) *Grimes* v. *Lethem* (1898), 3 Tax C. 623, *supra*, p. 174. Sect. 34 is the successor of sect. 23 of the Customs and Inland Revenue Act, 1890 (53 & 54 Vict. c. 8); cf. *Furtado* v. *City of London Brewery*, *infra*, p. 325.

(*t*) *Bruce* v. *Burton* (1901), 4 Tax C. 399.

(*u*) *R.* v. *City of London Commrs.* (1904), 91 L. T. 94; *vide supra*, p. 317.

(*x*) Sect. 35; *vide supra*, p. 86.

(*y*) Sect. 36; *vide supra*, p. 183.

(*z*) *Vide supra*, p. 268. The allowances made under Sched. A, No. VI. are granted by the General Commissioners in making the assessment; *vide supra*, p. 268.

(*a*) *Vide supra*, p. 271.

and those given by sect. 39 to friendly societies, trade unions, savings banks and so forth (*b*), are claimed before the Special Commissioners, except that the British Museum trustees and friendly societies have the option of going before General Commissioners (*c*). The Commissioners are bound to allow the claim on proof of the facts and to issue an order for repayment. If they wrongly refuse to do so, a writ of mandamus will issue to compel them, whether their error is one of fact or of law (*d*); and an order for costs may be made against them (*e*). Such a claim is not an appeal, and the Commissioners who hear it have no power to state a case (*f*).

Certain special allowances under Schedule A in respect of ecclesiastical matters, and of lands in Scotland, may be made by way of repayment (*g*).

The additional allowance for maintenance, repairs, &c., made under Schedule A, No. V., Rule 8, is given by repayment, but is claimed (unless the surveyor accepts the claim) by way of appeal to the General Commissioners (*h*).

Allowances for loss by flood and tempest under Schedules A and B are given by General Commissioners in the form of an abatement of the assessment (*i*), which doubtless entitles the person in question to repayment, if the tax has already been paid.

In cases of succession to trade, an adjustment of tax between predecessor and successor may be claimed before General Commissioners on the surveyor's certificate; their

(*b*) *Vide supra*, p. 274.

(*c*) Sect. 40; *vide supra*, p. 271.

(*d*) *Special Commrs.* v. *Pemsel*, [1891] A. C. 531, *supra*, p. 275. For instances see *R.* v. *Special Commrs., Ex parte University College of N. Wales* (1909), 5 Tax C. 408; *Ex parte Essex Hall*, [1911] 2 K. B. 434; *Ex parte Dr. Barnardo's Homes*, [1920] 1 K. B. 26, 468, *supra*, p. 275.

(*e*) *Ex parte Dr. Barnardo's Homes, supra*, in the K. B. D.; the C. A. decided in favour of the Commissioners and had no occasion to consider this point.

(*f*) *Garston Overseers* v. *Carlisle*, [1915] 3 K. B. 381, *supra*, p. 269, per ROWLATT, J., at p. 386.

(*g*) Sched. A, No. V. rr. 1, 3, 4, *infra*, p. 414, 415.

(*h*) Sched. A, No. V. r. 8 (5), *infra*, p. 417; read with sect. 27 (5); *vide supra*, p. 43.

(*i*) Rule 9; Sched. B, r. 3, *infra*, p. 426.

determination is final, and is followed by repayment to the person who has overpaid (*k*).

In cases of succession and of dissolution or change of partnership (by death or otherwise), where owing to diminution of profits from some specific cause, a claim is made for the actual assessment to be made on some other basis than that of the profits of the preceding year or the average of three preceding years, as the case may be (*l*), the claim may be made on appeal; the facts must be proved to the satisfaction of the Commissioners indeed, but it is open to the party to require a case to be stated on any question of law that arises (*m*). But if the claim is for an amendment of the assessment, after it has become final (*n*), and is brought either on the ground that the person charged has ceased to carry on the trade or profession, or has died or become bankrupt, or has from any other specific cause been deprived of or lost the profits computed for assessment, or on the ground that his successor's profits have fallen short from some specific cause (*o*), an application for amendment or vacating of the assessment must be made to the General Commissioners within three months after the end of the year of assessment (*p*). Such an application is not an appeal, and the Commissioners have no power to state a case for the opinion of the High Court (*q*).

Applications by persons assessed under Schedule D on account of diminution of profits due to the War have been dealt with elsewhere (*r*); upon such an application there is power to state a case.

Where the business done by a non-resident person is

(*k*) Sched. D, Cases I. and II. r. 9; *vide supra*, p. 167.

(*l*) Rule 11; *vide supra*, p. 168.

(*m*) *Ryhope Coal Co.* v. *Foyer* (1881), 7 Q. B. D. 485; *Ferguson* v. *Aikin* (1898), 4 Tax C. 36, and other cases cited with these, *supra*, p. 169.

(*n*) *Vide supra*, p. 304.

(*o*) *Vide supra*, p. 170.

(*p*) Sched. D, Misc. Rules, r. 3, *infra*, p. 444.

(*q*) *Furtado* v. *City of London Brewery Co.*, [1914] 1 K. B. 709; rule 3 corresponds for this purpose with sect. 133 of the Act of 1842. Cf. *Grimes* v. *Lethem; Bruce* v. *Burton*, *supra*, p. 328.

(*r*) *Supra*, p. 171.

assessed in the name of a resident on a percentage of the turnover, an appeal against the amount of percentage lies to the General or Special Commissioners; and a further reference may be required to a Board of Referees (*s*).

Applications to settle proportions of tax payable or deductible as between tenant and landlord or any other person, and between the occupier of lands and any former occupier are made to the General Commissioners, whose determination is final (*t*).

Applications under the temporary provision giving relief where the actual income has fallen short by more than ten per cent. of that assessed are dealt with in Chapter I. (*u*).

Time for claiming Repayment.

Except where it is above indicated that a shorter time is laid down (*x*), every claim for repayment must be made within three years after the end of the year of assessment to which it relates (*y*); an exception is made for a claim to what may be called a deferred exemption or abatement, owing to income accumulating under a will or settlement until the happening of a contingency (*z*).

Method of Repayment.

In any of the above cases in which the claim for relief has been allowed, the General Commissioners, if the tax has already been paid by deduction or otherwise, certify the particulars to the Special Commissioners, who issue an order for repayment (*a*). This procedure does not appear to be necessary where the claim has been allowed by the Special Commissioners themselves, and proof of payment is given to them.

(*s*) General Rules, r. 9; *vide supra*, p. 256.
(*t*) Rule 22, *infra*.
(*u*) *Supra*, p. 27.
(*x*) *Vide supra*, pp. 323, 325.
(*y*) Sect. 41, *infra*, p. 355.
(*z*) Sect. 41, read with sect. 25, *infra*, p. 345.
(*a*) Sect. 29, *infra*, p. 346.

No other means of securing Repayment.

The remedies open to the ratepayer for correcting an excessive assessment by way of appeal, and for securing repayment in various special cases have now been considered; there is no other means of obtaining repayment where there has been a valid assessment, even though the amount assessed is excessive in fact or in law. Petition of right will not lie in such a case (*b*). It seems probable that, if the assessment were invalid, and the Crown refused to refund the amount overpaid, a petition of right would lie. If distress is levied (*c*) in respect of an invalid assessment the subject can obtain damages in an action for unlawful distress (*d*).

(*b*) *Holborn Viaduct Land Co., Ltd.* v. *The Queen* (1887), 2 Tax C. 228; 52 J. P. 341, *supra*, p. 312. In *Hunter* v. *The King*, [1903] 1 K. B. 514; [1904] A. C. 161, such a petition was brought and decided upon (against the subject); but the Crown expressly waived the preliminary objection.

(*c*) See Chap. XVIII.

(*d*) *Berry* v. *Farrow*, [1914] 1 K. B. 632, *infra*, p. 331.

CHAPTER XVIII.

COLLECTION AND RECOVERY.

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Authority for Collection.

COLLECTION of tax is authorized when an assessment has been signed and allowed by the General Commissioners, by the delivery of a duplicate to the collector together with a warrant (*a*); when the assessment is made by the Special Commissioners (*b*), by the transmission to the proper officer of a certified extract; if payment is not made to him, the Special Commissioners deliver a duplicate with a warrant to the collector for the parish in which the person charged resides (*c*). In either case, the Act provides that the time for hearing appeals (*d*) must have expired before collection is authorized (*e*).

There are special provisions for the collection of tax in public departments and offices (*f*).

If a person charged under Schedule D declares his intention of paying under a number or letter, the Commis-

(*a*) Act of 1918, s. 153, *infra*, p. 383. Forms of duplicate and warrant appear in the Sixth Schedule (Nos. 5 and 6).

(*b*) *Vide supra*, p. 304.

(*c*) Sect. 154.

(*d*) *Vide supra*, p. 314.

(*e*) This is expressly provided in sect. 153 in the case of assessments allowed by the General Commissioners; and by sect. 147 the appeal provisions applicable to those assessments are applied to assessments made by the Special Commissioners; *vide supra*, p. 311.

(*f*) Sect. 155.

sioners may allow him to do so; but if his tax is in arrear, it will be recovered from him in the ordinary way (*g*).

The provisions as to collection and recovery of income tax are applied to super-tax "so far as they are applicable" (*h*).

Tax, when due.

The tax (apart from what is deducted at the source) is payable in a lump sum or in instalments according to the class of persons and the kind of profits on which it is charged (*i*). The income tax is payable in one lump sum for the year when charged—

on any company or body of persons (except a railway company in England or Ireland) under any Schedule except Nos. I. and II. of Schedule A;

on any person under Schedule B in respect of land occupied for any other purpose than husbandry (*k*);

on any person under Schedule D, Case III. (*l*), IV., V. (*m*), or VI. (*n*).

Super-tax is payable in one lump sum for the year.

Income tax is payable in two equal instalments when charged on any person under Schedule A, No. I. and No. II. (*o*);

on any individual or firm under Schedule B in respect of lands occupied for husbandry only (*p*);

on any individual or firm in respect of the profits of any trade, profession, or vocation charged under Schedule D (*q*), or of any concern charged under No. III. of Schedule A (*r*);

(*g*) Sect. 156.

(*h*) Sect. 7 (6). In practice the Special Commissioners keep the collection in their own hands; and payment is made by remittance to them or to the Accountant-General of Inland Revenue: see Regulations, *infra*, p. 481.

(*i*) Sect. 157 (1) (2), *infra*, p. 384.

(*k*) See Chap. IV.

(*l*) See Chap. VIII.

(*m*) See Chap. IX.

(*n*) See Chap. X.

(*o*) See Chap. II.

(*p*) See Chap. IV.

(*q*) See Chaps. VI. and VII.; this includes any office or employment that is not within the scope of Sched. E; see p. 130, *supra*. Tax charged on weekly wage-earners employed in manual labour is, however, payable quarterly; *vide supra*, p. 174.

(*r*) These are charged under the rules of Sched. D: see Chap. III.

on any individual in respect of any public office or employment of profit under Schedule E (*s*), "except individuals whose tax is deducted at definite intervals of less than half a year" (*t*).

Income tax is paid in four quarterly payments by railway companies in England and Ireland (*u*).

Weekly wage-earners employed in manual labour are assessed quarterly; and the tax is payable within twenty-one days after each assessment (*x*).

Where the tax is payable in one sum, it is payable on or before 1st January in the year of assessment; but if the assessment is not signed and allowed before 1st January, then it is payable on the day after it is signed and allowed (*y*).

Where the tax is payable in two equal instalments, the first is payable on or before 1st January, and the second on or before the 1st July following; but if the assessment is not signed and allowed before 1st July, it is payable in one sum on the day after it is signed and allowed (*z*).

In neither case is there any liability to pay until any appeal against the assessment has been disposed of (*a*).

Payment of tax charged under Schedule D may be made in advance, if desired, with an abatement at the rate of $2\frac{1}{2}$ per cent. per annum (*b*).

Infancy and Death.

If an infant is assessed and makes default in payment, his parent, guardian or tutor is liable to pay (*c*). If the

(*s*) See Chap. XI.

(*t*) *Vide supra*, p. 228. The words quoted appear on the face of the section to apply also to offices or employments charged under Sched. D, but it is difficult to imagine a case where this application would have any practical effect.

(*u*) Sect. 127 (3).

(*x*) Sect. 157 (4); Regulations 14, 15, *infra*, p. 483.

(*y*) Sect. 157 (1).

(*z*) Sect. 157 (2) (a).

(*a*) *Vide supra*, p. 314.

(*b*) Sect. 159. Sect. 208, *infra*, p. 399, appears to apply this privilege also to tax charged under any other schedule.

(*c*) Sect. 161 (1) (a), *infra*, p. 386. If another person is assessed in the first instance in place of the infant, the liability is on that other person, apart from any default of the infant; *vide supra*, p. 253.

person assessed dies before payment of tax, his executors or administrators, and in the case of an owner-occupier of lands assessed under Schedule A, his heirs or assigns also, are liable (*d*).

Demand and Receipt.

When the tax has become due and payable, the collector must demand it "from the persons charged therewith, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require" (*e*). It is only under Schedule A (*f*) and Schedule B (*g*) that the tax is charged in respect of any premises (*h*); in the case of tax under either of those Schedules, the demand note or the receipt must distinctly describe the property, and specify the amount of the assessment, and the rate of tax charged (*i*).

The "place of a person's last abode," or "his usual or last known place of abode" (*k*), does not necessarily mean a place of residence; it may be a "place of abode either from the business or domestic point of view"; but it must be "some place at which the notice [or demand] would be likely to be brought to his attention" (*l*). The manager of a company has not necessarily an abode at the company's office (*l*).

The collector is bound to give a receipt on payment of the tax (*m*).

Distress.

If a person neglects or refuses to pay the sum charged, distraint may be made (*n*). There are three conditions precedent to distraint: first, a notice of assessment must

(*d*) Sect. 161 (1) (b), (3); *vide supra*, p. 259.
(*e*) Sect. 158 (1), *infra*, p. 385.
(*f*) See Chaps. II. and III. (*g*) See Chap. IV.
(*h*) Sched. A, No. VII. r. 4, *infra*, p. 419; Sched. B, r. 4, *infra*, p. 426.
(*i*) Sect. 158 (2). This is provided so as to assist tenants, &c. in deducting tax against landlords, &c.; *vide supra*, pp. 55 *sqq*.
(*k*) See sect. 220 (4), *infra*, p. 402.
(*l*) *Berry* v. *Farrow*, [1914] 1 K. B. 632, *supra*, p. 307; per BANKES, J., at p. 639.
(*m*) Sect. 158 (3).
(*n*) Sect. 162 (1), *infra*, p. 386. Provisions as to recovery in Scotland are contained in sect. 166 and sect. 168 (3).

have been duly served, whether the assessment is an original one or an additional first assessment (*o*); secondly, the tax must have been duly demanded as above described; thirdly, unless the demand has been made from the person charged himself, and he has refused to pay, a reasonable time must have been allowed after the demand in order to admit of his making the payment required, for otherwise refusal or neglect cannot be inferred (*p*).

The collector's warrant of appointment is sufficient; and no further authority is required for the distress unless it becomes necessary to break open any house or premises, in which case a warrant must be obtained from the General Commissioners (*q*).

Distress can be levied after the year of assessment (*r*) has expired, and, it would seem, at any time until a schedule of arrears has been certified to the High Court (*s*).

Where the tax is charged under Schedule A or Schedule B, it is charged in respect of the premises (*t*), and any chattels found upon the premises can be seized, although they be the property of third parties, or implements of trade (*u*); the Law of Distress Amendment Act of 1888, does not apply (*u*); nor do those of 1895 and 1908. Under the other Schedules, however, the tax is charged upon the person and not on the premises, and it can therefore be recovered by distress upon the goods of the person charged only (*x*); his implements of trade may, however, be seized (*y*).

(*o*) *Berry* v. *Farrow*, *supra*; see pp. 301, 306, *supra*.

(*p*) *Gibbs* v. *Stead* (1828), 8 B. & C. 528. If *R.* v. *Ford* (1835), 2 Ad. & E. 588, conflicts with that case, it is submitted that the earlier decision is the sounder.

(*q*) Sect. 162 (1), (2), (3). As to cases where the defaulter has removed, see sect. 168.

(*r*) *Vide supra*, p. 4.

(*s*) *Elliott* v. *Yates*, [1900] 2 Q. B. 370; sect. 176 (1) (b), *vide supra*, p. 33.

(*t*) See note (*i*) on p. 50. Special provisions for distress in the case of tithes and of certain other profits arising out of land (see Chaps. II. and III.) are contained in sect. 170.

(*u*) *MacGregor* v. *Clamp*, [1914] 1 K. B. 288.

(*x*) See *Shaftesbury* (*Earl*) v. *Russell* (1823), 1 B. & C. 666; and per LUSH, J., [1914] 1 K. B. at p. 292. As to distraint where a wife living with her husband is separately assessed, see sect. 171.

(*y*) See *Hutchins* v. *Chambers* (1758), 1 Burrows, 579; *MacGregor* v. *Clamp*, *supra*.

If lands charged under Schedule A are unoccupied, and no distress can be found thereon when the tax is payable, it may be recovered by a distress levied upon those lands at any future time, as if the occupier had been in occupation when the tax became due (*z*).

The goods seized are kept for five days at the defaulter's costs; if the tax and costs are not paid within that time, the goods are to be appraised and sold by public auction for payment of the tax, and the costs of taking, keeping and selling the distress; the balance is returned to the owner of the goods (*a*). Where the tax due does not exceed 20*l*., the costs are regulated by the Schedule in the Distress (Costs) Act, 1817 (*b*).

Priority over Private Seizure.

In England the goods of any person whose tax is in arrear may not be seized except at the suit of the landlord for rent or taken under any assignment, unless the arrears, up to the amount due for a whole year, are first paid (*c*). In Scotland such a payment will also enable a person to take the defaulter's goods by virtue of any poinding, sequestration for rent, diligence or assignation; such taking is otherwise prohibited (*d*).

Priority in Bankruptcy.

In the distribution of the property of a bankrupt income tax assessed on the bankrupt up to the 5th April next before the date of the receiving order, and not exceeding in the whole one year's assessment, is given priority *pari passu* with certain other debts (*e*); and this provision

(*z*) Sect. 164. It is submitted that this provision only applies in respect of tax which became chargeable while the land was in occupation; see remarks on *Reading* v. *Chew* (1898), 3 Tax C. 625, *supra*, p. 52.

(*a*) Sect. 162 (4), (5). Provisions as to Scotland are contained in sect. 166, *infra*, p. 388.

(*b*) 57 Geo. 3, c. 93, applied by the Distress (Costs) Act, 1827 (7 & 8 Geo. 4, c. 17); cf. *Coster* v. *Headland*, [1906] A. C. 286.

(*c*) Sect. 163.

(*d*) Sect. 167.

(*e*) Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 33 (1) (a).

applies as if the date of the death were the date of the receiving order, in the case of a person who dies insolvent where an administration order has been made either in bankruptcy or in Chancery (*f*). In the above cases, after all the debts to which priority is given are paid, the Crown has, for any further arrears that are due, a priority at common law over all other debts.

But sect. 33 (5) of the Act of 1914 does not apply to the private administration out of Court of a deceased insolvent's estate, and the Crown in such a case has a common law priority over all other debts in respect of all arrears of income tax (including super-tax) (*g*); this priority is not limited to one year's assessment.

Priority in Winding-up, &c.

In winding-up (*h*), and when a receiver is appointed on behalf of debenture-holders secured by a floating charge, or when possession is taken by or on behalf of the debenture-holders (*i*), priority is also given to income tax *pari passu* with certain other debts. In the case of a compulsory winding-up where the company had not previously commenced to be wound up voluntarily, the priority is confined to the income tax assessed up to the 5th April next before the date of the winding-up order; and in any other case of winding-up, to the tax assessed up to the 5th April next before the date of the commencement of the winding-up (*k*). When a receiver is appointed or possession is taken, the priority is confined to tax assessed up to the 5th April next before the date of the appointment or of taking possession (*l*). In none of these cases is priority given for income tax exceeding in the whole one year's assessment (*m*).

(*f*) Sect. 33 (5), as limited by *In re Heywood*, [1897] 2 Ch. 593; and *In re Laycock*, [1919] 1 Ch. 241.

(*g*) *In re Laycock, supra.*

(*h*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 209 (1) (a).

(*i*) Sect. 107 (1).

(*k*) Sect. 209 (1) (a), read with sub-sect. (5).

(*l*) Sect. 209 (1) (a), read with sect. 107 (2).

(*m*) Sect. 209 (1) (a).

The common law priority of the Crown has been cut down by the enactments referred to (*n*); but after all the debts to which they give priority have been satisfied, the Crown has a priority over all other debts for any further arrears of tax that are due.

A liquidator is bound before distributing the assets to provide for the payment of any income tax that is due (*o*).

Commitment.

If no sufficient distress can be found, the defaulter may be committed to prison under a warrant of the General Commissioners; but for this purpose ten clear days must have elapsed after the service of the demand (*p*). A parent, guardian, or tutor of an infant, and an executor or administrator of a deceased person, are equally liable to commitment with a person who has been assessed on his own account (*q*).

Schedules of Arrears and of Defaulters.

On a day appointed by the Commissioners of Inland Revenue, the collector must deliver to the surveyor a schedule of arrears verified on oath (*r*); after forty days from the time of such delivery, the Commissioners of Inland Revenue may certify the schedule to the High Court; but notice must have been given to each defaulter within the forty days, and the defaulter may pay his arrear, which must then be discharged from the schedule (*s*). The collector may not distrain for any arrears after the schedule has been so certified (*t*).

The collector is also to deliver to the General Com-

(*n*) *In re Henley* (1878), 9 Ch. D. 469, and *In re Oriental Bank Corporation* (1884), 28 Ch. D. 643, are therefore no longer applicable except as to the Crown's priority *after* those enactments have been complied with.

(*o*) *In re Watchmakers' Alliance* (1905), 5 Tax C. 117. As to the assessment of a receiver or liquidator where he carries on the trade, *vide supra*, p. 107.

(*p*) Act of 1918, s. 165, *infra*, p. 387; sect. 168 (2). These provisions apply in Scotland, see sect. 168 (3).

(*q*) Sect. 161 (1).

(*r*) Sect. 172 (1) (a), (2) (b).

(*s*) Sect. 176 (1) (a), *infra*, p. 392.

(*t*) Sect. 176 (1) (b); *Elliott* v. *Yates*, *supra*, p. 332.

missioners a schedule of deficiencies, showing (among other matters) sums unpaid owing to default (*u*), and stating that no distress can be found; so far as default is concerned, the schedule and a statement that no distress can be found must be verified on oath (*x*); the General Commissioners after examining the collector on oath, make out a schedule of defaulters, which they transmit to the Commissioners of Inland Revenue (*y*), who may certify it to the High Court (*z*).

Proceedings in High Court.

Any income tax or super-tax charged may be recovered with costs in the High Court as a debt due to the Crown, or by any other means whereby any debt of record or otherwise due to the Crown may be sued for or recovered (*a*); it is not necessary that proceedings for distress should first have been instituted and have failed: the Crown elects by what method it will proceed (*b*). If the Crown is unsuccessful, it may be ordered to pay costs (*c*).

A schedule of arrears or of defaulters (*d*) delivered on oath by a collector and certified to the High Court by the Commissioners of Inland Revenue is sufficient authority to a Judge of the High Court to issue process, and sufficient evidence of the debt (*e*).

(*u*) Sect. 175 (1); no limit of time is laid down: sects. 177—184 relate to penalties, &c. upon defaulting collectors and others, and are not dealt with here, being of purely departmental interest.

(*x*) Sect. 175 (5).

(*y*) Sect. 175 (3), (4).

(*z*) Sect. 176 (2), (3), see below.

(*a*) Sect. 169 (1), *infra*, p. 391. For an exhaustive discussion of the remedies open to the Crown the reader is referred to Robertson, Civil Proceedings by and against the Crown; the subject is too large for incidental treatment.

(*b*) Sect. 169 (1). Note, however, that a schedule of defaulters cannot be certified to the High Court, nor is it an authority for the issue of process, unless it is stated on oath that no distress can be found.

(*c*) *Edinburgh Life, &c.* v. *L.-A.*, [1910] A. C. 143.

(*d*) See above.

(*e*) Sect. 176 (2), (3), *infra*, p. 393.

Weekly Wage-Earners.

Provision for the collection of the income tax due from weekly wage-earners (*f*) assessed quarterly is made in the regulations dealing with such assessments (*g*). The tax may be recovered by distress in the same way as in the case of an ordinary assessment (*h*). It may also be recovered summarily as a civil debt (*i*), proceedings being commenced in the name of the collector (*k*).

(*f*) *Vide supra*, p. 483.

(*g*) Regulations, *infra*, pp. 482—484; see sect. 131, *infra*, p. 373.

(*h*) Regulations 23, 17.

(*i*) Sect. 169 (2), *infra*, p. 391; see Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 35, read with sect. 6.

(*k*) Regulation 30.

APPENDIX.

THE INCOME TAX ACTS(*a*).

THE INCOME TAX ACT, 1918.

(8 & 9 Geo. 5, c. 40.)

An Act to Consolidate the Enactments relating to Income Tax.

[8th August, 1918.]

PART I.—CHARGE OF INCOME TAX.

1. Where any Act enacts that income tax shall be charged for any year at any rate, the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively described or comprised in the schedules marked A, B, C, D, and E, contained in the First Schedule to this Act and in accordance with the Rules respectively applicable to those Schedules.

2. Every assessment and charge to tax shall be made for a year commencing on the sixth day of April and ending on the following fifth day of April, except where under the provisions of this Act weekly wage-earners are to be assessed and charged quarterly.

3. The due proportion of tax shall be charged for every fractional part of twenty shillings, but no tax shall be charged of a lower denomination than one penny.

PART II.—SUPER-TAX.

4. In addition to the income tax charged at the rate prescribed for any year, there shall be charged, levied, and paid for that year in respect of the income of any individual, the total of which from all sources exceeds *two thousand pounds* (*b*), an additional duty of income tax (in this Act referred to as super-tax) at the rate or rates prescribed by Parliament for that year.

5.—(1) For the purposes of super-tax, the total income of any individual from all sources shall be taken to be the total income of that

(*a*) See Finance Act, 1919, s. 23, *infra*, p. 467.

(*b*) Substituted for "two thousand five hundred pounds," Finance Act, 1920, s. 32, and Third Sched.

individual from all sources for the previous year, estimated in the same manner as the total income from all sources is *required to be estimated in a return made in connection with any claim for a deduction from assessable income* (*c*), but subject to the provisions hereinafter contained.

(2) Where an assessment to income tax has become final and conclusive for the purposes of income tax for any year, the assessment shall also be final and conclusive in estimating total income from all sources for the purposes of super-tax for the following year, and no allowance or adjustment of liability on the ground of diminution of income or loss shall be taken into account in estimating the total income from all sources, unless that allowance or adjustment has been previously made in respect of income tax on an application under the special provisions of this Act relating thereto.

(3) In estimating the income of the previous year for the purpose of super-tax—

(a) there shall be deducted in respect of any land on which income tax is charged upon the annual value estimated otherwise than in relation to profits (in addition to any other deduction), any sum by which the assessment is reduced for the purposes of collection, or on which income tax has been repaid under the provisions of this Act in respect of the cost of maintenance, repairs, insurance, and management; and

(b) there shall be deducted, in the case of an individual in the service of the Crown abroad, any such sum as the Treasury may allow for expenses which in their opinion are necessarily incidental to the discharge of the functions of his office, and for which an allowance has not already been made;

(c) any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, and any deductions allowable on account of any annual sums paid out of the property or profits of the individual, shall be allowed as deductions in respect of the year in which they are payable, notwithstanding that the income or the annual sums, as the case may be, accrued in whole or in part before that year.

6. In the case of the death of an individual liable to super-tax during any year for which super-tax is charged, a part only of the year's super-tax shall be payable, proportionate to the part of the year which has elapsed before the date of the death.

7.—(1) Super-tax shall be assessed and charged by the special commissioners.

(2) Every person upon whom notice is served, in manner prescribed by regulations under this section, by the special commissioners, requiring him to make a return of his total income from all sources, or, in the case

(*c*) Words substituted, see p. 339, note (*b*).

of a notice served upon any person who is chargeable with or liable to be assessed to income tax, as representing an incapacitated, non-resident, or deceased person, of the total income from all sources of the incapacitated, non-resident, or deceased person, shall, whether he is or is not chargeable with super-tax, make such a return in the form and within the time required by the notice.

(3) It shall be the duty of every person chargeable with super-tax to give notice that he is chargeable to the special commissioners before the thirtieth day of September in the year for which super-tax is chargeable.

(4) If any person without reasonable excuse fails to make any return or to give any notice required by this section, he shall be liable to a penalty not exceeding fifty pounds, and after judgment has been given for that penalty to a further penalty of the like amount for every day during which the failure continues.

(5) If any person fails to make a return under this section, or if the special commissioners are not satisfied with any return made under this section, they may make an assessment of super-tax according to the best of their judgment.

(6) All provisions of this Act relating to persons who are to be chargeable with income tax, and to income tax assessments, and to appeals against those assessments, and to the collection and recovery of income tax, and to cases to be stated for the opinion of the High Court shall, so far as they are applicable, apply to the charge, assessment, collection, and recovery of super-tax under this section, and the special commissioners shall, for the purpose of assessment, have any powers of a surveyor, and for the purpose of the representation of the Crown on any appeal before the special commissioners, any person nominated in that behalf by the Commissioners of Inland Revenue shall have the same powers at, and upon the determination of, the appeal as a surveyor has at, and upon the determination of, any appeal relating to income tax.

(7) The special commissioners may amend any assessment made by them under this section, or make an assessment or an additional assessment, during any time within the year of assessment, or within three years after the expiration thereof.

(8) The Commissioners of Inland Revenue may make regulations for the purpose of carrying this section into effect.

8.—(1) If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, either by a husband or wife, within six months before the *sixth day of July* (*d*) in any year of assessment—

(a) super-tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of this Act with respect to the assessment, charge, and recovery of

(*d*) Substituted for "sixth day of May," Finance Act, 1919, s. 26.

super-tax, and the penalties for failure to make a return shall apply as if they were not married; and

(b) the income of the husband and wife shall be treated as one in estimating total income for the purpose of super-tax, and the amount of super-tax payable in respect of the total income shall be divided between the husband and wife in proportion to their respective incomes, and the total amount payable shall not be less than it would have been if an application had not been made under this section.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this section to be made at any time, and the provisions of this Act relating to penalties imposed in the case of income tax for neglect or refusal to deliver, or for delay in delivering, true and correct statements of profits or gains, shall, with the necessary modifications, apply in the case of the neglect or refusal to make, or wilful delay in making, any such return.

PART III.—EXEMPTION, ABATEMENT, AND RELIEF.

9. (*Relief from tax based on total income*) (*e*).

10. (*Exemption.*)

11. (*Abatement.*)

12. (*Relief in respect of children.*)

13. (*Relief in respect of wife and certain relatives.*)

14 (*f*). . . . . .

(3) For the purposes of this section the expression "earned income" means (*h*)—

(a) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay, or not; and

(b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and

(c) any income which is charged under Schedule B. or Schedule D.,

(*e*) Sects. 9—13 repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(*f*) Sub-sects. (1) and (2) repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(*h*) Applied and extended, Finance Act, 1920, s. 33, *infra*, p. 477.

or the rules applicable to Schedule D., and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession, or vocation, either as an individual, or, in the case of a partnership, as a partner personally acting therein.

(4) In cases where the profits of a wife are deemed to be profits of the husband, any reference in this section to the individual includes either the husband or the wife.

15. (*Relief in respect of unearned income*) (*i*).

16. Except as otherwise provided, any *allowance or deduction* (*j*) shall be given either by discharge or reduction of the assessment, or by repayment of the excess which has been paid, or by all or any of those means, as the case may require.

17. A claimant shall not be entitled to *allowance or deduction* (*k*) in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person.

18. Where an assessment has become final and conclusive for the purposes of tax for any year of assessment, that assessment shall also be final and conclusive in estimating total income from all sources for the purposes of *the Income Tax Acts* (*l*), and no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating such total income from all sources for such purposes unless that allowance or adjustment has been previously made on an application under the special provisions of this Act relating thereto.

19. For the purpose of *any claim for an allowance or deduction* (*m*), the income arising from the ownership of lands, tenements, hereditaments, or heritages shall, subject to any allowance, reduction, or relief granted under this Act, be deemed to be the annual value thereof estimated in accordance with the rules applicable to Schedule A. and the income arising from the occupation of lands, tenements, hereditaments and heritages shall, subject to any allowance, reduction or relief granted under this Act, be deemed the assessable value thereof estimated in accordance with the rules applicable to Schedule B., and where a claimant is both owner and occupier, the amount of the annual value under Schedule A., added to the amount of the assessable value under Schedule B., shall be deemed to be the income arising from those lands, tenements, hereditaments or heritages.

20. The following persons having joint interests, that is to say,—

(a) coparceners, joint tenants, or tenants in common of the profits of any property; and

(*i*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.
(*j*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.
(*k*) Words substituted, *ibid.*
(*l*) Words substituted, *ibid.*
(*m*) Reference substituted, *ibid.*

(b) joint tenants, or tenants of land or tenements in partnership, being in the actual and joint occupation thereof in partnership, who are entitled to the profits thereof in shares; and

(c) partners carrying on a trade, profession or vocation together who are entitled to the profits thereof in shares,

may claim *any allowance or deduction* (*n*) according to their respective shares and interests, and any such claims which are proved to the satisfaction of the commissioners to whom they are made, may be dealt with in the same manner as in the case of several interests:

Provided as follows:—

(i) Profits arising from the occupation of lands shall not be separately charged if the lands are let or underlet without the lessor relinquishing the possession thereof or if the lessee is not exclusively in the possession and occupation of the lands:

(ii) The income of a partner from a partnership carrying on any trade, profession, or vocation shall be deemed to be the share to which he is entitled during the year to which the claim relates, in the partnership profits, such profits being estimated according to the several rules and directions of this Act.

21. (*Relief in respect of separate business of a married woman*) (*o*).

22.—(1) In the case of weekly wage-earners to whom the provisions of this Act as to quarterly assessment apply, the assessment and charge of tax in each quarter shall not affect the grant of any *allowance or deduction* (*p*) which is dependent wholly or partially on total annual income; and any such exemption, abatement or relief shall be given in cases where the tax is assessed and charged quarterly under this Act, as if the total wages on which the tax is charged and the total tax charged for the four quarters of the year were respectively the total income for the year from the wages and the total tax charged for the year in respect of the wages.

(2) The Commissioners of Inland Revenue may, however, if they think fit in any case, in accordance with regulations made by them, allow any such exemption, abatement or relief by way of reduction of the quarterly assessment or repayment of the quarterly tax.

23. Where relief has been granted for any year of assessment under any provisions of this Act providing for the reduction of an assessment on any source of income in cases where the profits of the year of assessment fall short, or in cases of deprivation of or loss of profits or gains from some specific cause, the amount of the assessment as reduced shall be deemed to be the income from that source in ascertaining the total

(*n*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.
(*o*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.
(*p*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.

income from all sources for that year for the purpose of any claim for *allowance or deduction* (*q*).

24. (*Restriction of tax when margin of income above a certain limit is small*) (*r*).

25. Where in pursuance of the provisions of any will or settlement any income arising from any fund is accumulated for the benefit of any person contingently on his attaining some specified age or marrying, and the aggregate amount in any year of assessment of that income and the income from any other fund subject to the like trusts for accumulation and of the total income of that person from all sources (hereinafter referred to as "the aggregate yearly income") is of such an amount only as would entitle an individual either to total exemption from tax or to relief from tax, that person shall, on making a claim for the purpose within three years after the end of the year of assessment in which the contingency happens, be entitled, on proof of the claim in manner prescribed by this Act, to have repaid to him on account of the tax which has been paid in respect of the income during the period of accumulation a sum equal to the aggregate amount of relief to which he would have been entitled if his total income from all sources for each of the several years of the said period had been equal to the aggregate yearly income for that year; but in calculating that sum a deduction shall be made in respect of any relief already received.

26. (*No relief where individual not resident in the United Kingdom*) (*s*).

27.—(1) Any person who claims *any allowance or deduction* (*t*) shall, within the time limited by this Act for the delivery of lists, declarations, and statements, or within such further time as the general commissioners for the division may for any special reason allow, deliver to the assessor of the parish in which he resides, a notice of his claim, together with a declaration and statement in the prescribed form, signed by him, setting forth—

(a) all the particular sources from which his income arises, and the particular amount arising from each source;

(b) all particulars of any yearly interest or other annual payments, reserved or charged thereon, whereby his income is or may be diminished; and

(c) all particulars of sums which he has charged or may be entitled to charge on account of tax against any other person, or which he has deducted, or may be entitled to deduct, out of any payment to which he is or may be liable.

(*q*) Words substituted, see p. 345, note (*p*).

(*r*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(*s*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.; see now Act of 1920, s. 24.

(*t*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.

(2) Any surveyor may examine every such declaration and statement and take copies of or extracts from the same.

(3) The assessor shall transmit to the commissioners the notice of claim and the declaration and statement.

If the surveyor does not within forty days after the transmission or within such further time as the commissioners on just cause may allow, make an objection to the claim, the commissioners may allow the claim.

(4) If it appears that any property or profits of the claimant are charged, or are liable to be charged, in some other division, the commissioners shall certify the allowance, in the prescribed form, to the Commissioners of Inland Revenue, who shall direct the appropriate relief to be given in that other division.

(5) If the surveyor objects in writing to such claim stating that he has reason to believe that the income of the claimant, or any other particulars in the declaration or statement of the claimant, are not truly or fully set forth in any specified particular, the claim shall be heard and determined by way of appeal by the general commissioners, in like manner as other appeals under this Act and with the like liability to penalties, and if the claim is allowed the commissioners shall grant and issue all necessary certificates accordingly.

28.—(1) All claims *for any allowance or deduction* (*u*) shall be made and proved before the general commissioners for the division in which the claimant resides, pursuant to the powers and provisions under which tax under Schedule D. is ascertained and charged, and whether he be personally charged in that division or not.

(2) If the whole income of the claimant arises from an office or employment of profit, or from a pension or stipend under the jurisdiction of the commissioners of a department or office, the claim may be made to and allowed by those commissioners.

(3) If a claimant is not within the United Kingdom, an affidavit stating the particulars required by this Act, and taken before any person who has authority to administer, in the place where the claimant resides, an oath with regard to any matter relating to the public revenue of the United Kingdom, may be received by the respective commissioners.

(4) If satisfactory proof is given to the commissioners that a claimant is unable to attend in person, a claim on his behalf may be made by any guardian, trustee, attorney, agent or factor acting for him.

(5) Where a person is assessable on behalf of any other person, he may make a claim as aforesaid on behalf of that other person.

29.—(1) If it is proved to the satisfaction of the general commissioners that any person whose claim for *allowance or deduction* (*x*) or relief has been allowed, has paid any tax, by deduction or otherwise, the general commissioners may, in the form prescribed, certify the facts proved before them to the special commissioners.

(*u*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.
(*x*) Words substituted, *ibid.*

(2) The certificate of the general commissioners shall state the particulars of the different sources of income in respect of which tax has been paid, the relief to which the claimant is entitled, the amount repayable in respect thereof, and the name and place of abode of the claimant.

(3) On receipt of the certificate, the special commissioners shall issue an order for repayment.

30.—(1) A person who in making a claim for or obtaining any *allowance or deduction* (*y*), or in obtaining any certificate as aforesaid—

(a) is guilty of any fraud or contrivance; or

(b) fraudulently conceals or untruly declares any income or any sum which he has charged against or deducted from, or was entitled to charge against or to deduct from another person; or

(c) fraudulently makes a second claim for the same cause,

shall forfeit the sum of twenty pounds and treble the tax chargeable in respect of all the sources of his income and as if such claim had not been allowed.

(2) A person who knowingly and wilfully aids or abets any person in committing an offence under this section shall forfeit the sum of fifty pounds.

31. (*Right of husband and wife to claim relief separately*) (*z*).

Relief in respect of Insurance, Losses, and Certain Payments.

32.—(1) Any person—

(a) who has made an insurance on his life or the life of his wife, or who has contracted for any deferred annuity on his own life or the life of his wife, with any insurance company legally established in the United Kingdom or in any British Possession, or lawfully carrying on business in the United Kingdom, or with a registered friendly society, or, in the case of a deferred annuity, with the National Debt Commissioners; and

(b) *who* (*a*) *is under any Act of Parliament or under the terms or conditions of his employment liable to the payment of any sum or to the deduction from his salary or stipend of any sum for the purpose of securing a deferred annuity to his widow or provision for his children after his death;*

shall, subject as hereinafter provided, be entitled to have the amount of tax payable by him reduced by a sum representing tax at the appropriate rate on the amount of the premium paid by him for any such insurance or contract or on the amount of the sum paid by him or deducted from his salary or stipend.

(*y*) Reference substituted, see p. 346, note (*u*).

(*z*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.; see now Act of 1920, s. 25.

(*a*) Words to end of sub-sect. (1) substituted by Finance Act, 1920, s. 26 (1).

For the purposes of this section, the expression "appropriate rate" means—

(i) *where the total income of the claimant from all sources estimated in accordance with the provisions of the Income Tax Acts does not exceed one thousand pounds, half the standard rate of tax:*

(ii) *where the total income of the claimant from all sources estimated as aforesaid exceeds one thousand pounds but does not exceed two thousand pounds, three-fourths of the standard rate of tax:*

(iii) *where the total income of the claimant from all sources estimated as aforesaid exceeds two thousand pounds, the standard rate of tax.*

(2) If any such person is charged to tax under any Schedule and has paid that tax, or has paid or has been charged with tax by deduction or otherwise, he shall, on a claim being made to the special commissioners, and on production to them of the receipt for his (*b*) payment, and proof of the facts to their satisfaction, be entitled to repayment of tax on the amount thereof *at the appropriate rate* (*c*).

(3) No such allowance—

(a) shall be made in respect of any such amounts beyond one-sixth of the total (*d*) income of the person from all sources estimated in accordance with *the provisions of the Income Tax Acts* (*e*);

(b) . . . (*f*);

(c) shall exceed, in respect of any premium or other payment payable on a policy for securing a capital sum on death (whether in conjunction with any other benefit or not), *the amount of the tax calculated at the appropriate rate on an amount equal to* (*g*) seven per cent. of the actual capital sum assured, and, in calculating any such capital sum, no account shall be taken of any sum payable on the happening of any other contingency, or of the value of any premiums agreed to be returned, or of any benefit by way of bonus, or otherwise, which is to be or may be received either before or after death, either by the person paying the premium, or by any other person, and which is not the sum actually assured;

(d) shall *in any case exceed the amount of the tax calculated at the appropriate rate on one hundred pounds* (*h*) in respect

(*b*) Word "annual" omitted, Finance Act, 1920, s. 32, and Third Sched.
(*c*) Words added, Finance Act, 1920, s. 26 (2).
(*d*) Word "chargeable" omitted, Finance Act, 1920, s. 32, and Third Sched.
(*e*) Words substituted, *ibid.*
(*f*) Paragraph (b) omitted, *ibid.*
(*g*) Words inserted, Finance Act, 1920, s. 26 (3).
(*h*) Words substituted, sect. 26 (4).

of any premiums or payments to which this section applies and which are payable for securing any other benefits than as last aforesaid;

(e) shall, as regards insurances or contracts for deferred annuities made after the twenty-second day of June, nineteen hundred and sixteen,

(i) be given at a greater rate of tax than *half the standard rate of tax* (*i*);

(ii) be given except in respect of premiums or other payments payable on policies for securing a capital sum on death, whether in conjunction with any other benefit or not; or

(iii) be given in respect of premiums or payments payable during the period of deferment in respect of a policy of deferred assurance:

Provided that the two last-mentioned restrictions shall not affect premiums or payments payable on policies or contracts made in connection with any superannuation or bonâ fide pension scheme for the benefit of the employees of any employer or of persons engaged in any particular trade, profession, vocation or business, *or for the benefit of the wife or widow of any such employee or person or of his children or other dependants* (*k*), or on any policy taken out by a teacher in a secondary school pending the establishment of a superannuation or pension scheme for those teachers.

(4) . . . (*l*).

(5) War insurance premiums shall not be taken into account in calculating the aforesaid limits of one-sixth of the total income from all sources, or of seven per cent., or of one hundred pounds.

(6) In this section the expression "war insurance premiums" means any additional premium or other sum paid in order to extend an existing life insurance policy to risks arising from war or war service abroad, and any part of any premium or other sum paid in respect of a life insurance policy covering those risks, or either of them, which appears to the commissioners to whom the claim for relief is made to be attributable to those risks, or either of them.

(7) Where premiums in respect of any insurance effected with a registered friendly society are made payable for shorter periods than three months, a person who claims relief under this section must, in order to obtain relief, produce to the surveyor a certificate, signed by an officer of the society, specifying the correct amount of premiums paid during the year of assessment.

A person who wilfully gives or produces a false certificate shall forfeit the sum of fifty pounds.

(*i*) Words substituted, sect. 26 (5).

(*k*) Words inserted, sect. 26 (6).

(*l*) Sub-sect. (4) omitted, Finance Act, 1920, s. 32, and Third Sched.

(8) (*m*) *Where a premium is paid by a wife out of her separate income in respect of an insurance on her own life or the life of her husband or a contract for any deferred annuity on her own life or the life of her husband, the same allowance of tax shall be made as if the premium were a premium paid by her husband for an insurance on his own life or for a contract for a deferred annuity on his own life, and this section shall apply accordingly.*

(9) (*m*) *Where the tax ultimately payable by any person after deducting the allowance under this section is greater than the amount of tax which would be payable if the total income of that person exceeded one thousand pounds or two thousand pounds, as the case may be, the allowance under this section shall be increased by a sum representing the amount by which tax at one-fourth of the standard rate on the amount of the premiums or payment in respect of which the allowance is made exceeds the amount of the tax at the standard rate on the amount by which the total income falls short of one thousand pounds or two thousand pounds, as the case may be.*

33.—(1) Where an assurance company carrying on life assurance business, or any company whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom, or any savings bank or other bank for savings, claims and proves to the satisfaction of the special commissioners that, for any year of assessment, it has been charged to tax by deduction or otherwise, and has not been charged in respect of its profits in accordance with the rules applicable to Case I. of Schedule D, the company or bank shall be entitled to repayment of so much of the tax paid by it as is equal to the amount of the tax on any sums disbursed as expenses of management (including commissions) for that year:

Provided that—

(a) relief shall not be given under this section so as to make the tax paid by the company or bank less than the tax which would have been paid if the profits had been charged in accordance with the said rules; and

(b) the amount of any fines, fees, or profits arising from reversions in the case of an assurance company, and, in the case of any other company or any such bank, the amount of any income or profits derived from sources not charged to tax, shall be deducted from the amount treated as expenses of management for the year; and

(c) in calculating profits arising from reversions, the company may set off against those profits any loss arising from reversions for any previous year during which any enactment granting this relief was in operation.

(2) Notice of any claim to the special commissioners under this section, together with the particulars thereof, shall be given in writing to the

(*m*) Sub-sects. (8) and (9) added, Finance Act, 1920, s. 26 (7).

surveyor within twelve months after the expiration of the year of assessment in respect of which the claim is made, and where the surveyor objects to such claim the special commissioners shall hear and determine the same in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of this Act relating to the statement of a case for the opinion of the High Court on a point of law shall apply.

(3) A company or bank shall not be entitled to any relief under this section in respect of any expenses as to which relief may be claimed or allowed under rules 7 and 8 of No. V. of Schedule A.

(4) Where an assurance company, not having its head office in the United Kingdom, is charged under Case III. of Schedule D, on a proportion of the income from the investments of its life assurance fund, or on a basis substituted therefor, the relief in respect of expenses of management shall be calculated by reference to a like proportion of its total expenses of management for the year, estimated according to the provisions of this Act.

(5) Where income arising from the investments of the foreign life assurance fund of an assurance company has been relieved from tax in pursuance of the provisions of this Act, a corresponding reduction shall be made in the relief granted under this section in respect of the expenses of management.

34.—(1) Where any person sustains a loss in any trade, profession, employment or vocation, carried on by him either solely or in partnership, or in the occupation of lands for the purpose of husbandry only, or in the occupation of woodlands in respect of which he has elected to be charged to tax under Schedule D, he may upon giving notice in writing to the surveyor within six months after the year of assessment, apply to the general commissioners or to the special commissioners, for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year estimated according to this Act.

(2) The commissioners shall, on proof to their satisfaction of the amount of the loss, and of the payment of tax upon the aggregate amount of income, give a certificate authorising repayment of so much of the sum paid for tax as would represent the tax upon income equal to the amount of loss, and the certificate may extend to give any exemption, abatement, or relief depending upon total income from all sources, authorised by this Act.

Upon the receipt of the certificate the Commissioners of Inland Revenue shall cause repayment to be made in conformity therewith.

(3) If any person shall be guilty of any fraud or contrivance in making any application under this section, or in obtaining any such adjustment or certificate as aforesaid, he shall forfeit the sum of fifty pounds.

(4) Where repayment has been made to a person for any year under this section, he shall not be entitled, in computing the amount of the

assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such repayment has been obtained.

35. Where in any burgh in Scotland tolls commonly known by the name of customs are levied under the authority of any Act of Parliament or charter, and are applied and expended in the burgh in defraying the expenses of paving, lighting, or cleansing the same, or of the police thereof, or in discharging any other similar public burdens, any tax which has been charged and paid in respect of any such tolls shall, as regards so much of the tolls as shall have been expended as aforesaid, be repaid on due proof of the necessary facts to the satisfaction of the special commissioners.

36.—(1) Where interest payable in the United Kingdom on an advance from a bank carrying on a bonâ fide banking business in the United Kingdom is paid to the bank without deduction of tax out of profits or gains brought into charge to tax, the person by whom the interest is paid shall be entitled, on proof of the facts to the satisfaction of the special commissioners, to repayment of tax on the amount of the interest.

(2) A like repayment shall on the like proof be made in the case of interest (not being yearly interest) payable in the United Kingdom on an advance from a person who in the opinion of the Commissioners of Inland Revenue is bonâ fide carrying on business as a member of a stock exchange in the United Kingdom, or from any person who in the opinion of the said commissioners is bonâ fide carrying on the business of a discount house in the United Kingdom:

Provided that no repayment shall be made unless the Commissioners of Inland Revenue are satisfied that the interest has been or will be brought into account in the statement delivered or to be delivered for the purposes of income tax by the person making the advance.

Relief to Charities, Friendly Societies, &c.

37.—(1) Exemption shall be granted—

(a) from tax under Schedule A in respect of the rents and profits of any lands, tenements, hereditaments, or heritages belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes only:

Provided that any assessment upon the respective properties shall not be vacated or altered, but shall be in force and levied, notwithstanding the allowance of any such exemption;

(b) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, and from tax under Schedule D, in respect of any yearly interest or other annual payment forming part of the income of any body of persons or trust established for charitable purposes only, or which,

according to the rules or regulations established by Act of Parliament, charter, decree, deed of trust, or will, are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only;

(c) from tax under Schedule C in respect of any interest, annuities, dividends or shares of annuities, in the names of trustees applicable solely towards the repairs of any cathedral, college, church or chapel, or any building used solely for the purpose of divine worship, and so far as the same are applied to those purposes.

38. The trustees of the British Museum shall be granted exemption from tax under Schedule A in respect of the lands and tenements vested in them, and shall also be granted the like exemptions in respect of any dividends of stock vested in them, or in any other person for their use, as are granted to charitable institutions under this Act.

39.—(1) An unregistered friendly society whose income does not exceed one hundred and sixty pounds shall be entitled to exemption from tax, and a registered friendly society which is precluded, by Act of Parliament or by its rules, from assuring to any person a sum exceeding three hundred pounds by way of gross sum, or fifty-two pounds a year by way of annuity, shall be entitled to exemption from tax under Schedules A, C, and D.

(2) A registered trade union which is precluded, by Act of Parliament or by its rules, from assuring to any person a sum exceeding three hundred pounds by way of gross sum, or fifty-two pounds a year by way of annuity, shall be entitled to exemption from tax under Schedules A, C, and D in respect of its interest and dividends which are applicable and applied solely for the purpose of provident benefits.

The expression "provident benefits" includes any payment, expressly authorised by the registered rules of the trade union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member, or the wife of a member, or as provision for the children of a deceased member.

(3) (a) Any savings bank certified under the Savings Bank Act, 1863, shall be entitled to exemption from tax in respect of its interest and dividends arising from investments with the National Debt Commissioners.

(b) Any savings bank, whether certified under the Savings Bank Act, 1863, or not, shall be entitled to exemption from tax under Schedules C and D in respect of the income of its funds, so far as such income is applied in the payment or credit of interest to any depositor:

Provided as follows:—

(i) *any such interest shall be chargeable under Case III. of Schedule D* (*n*); and

(ii) where the interest paid or credited to any depositor in the year for which exemption is claimed by the bank exceeds the sum of five pounds, the bank and any branch thereof shall make a return to the surveyor for the district in which the bank or branch is situate of the name and place of residence of every depositor to whom any such sum has been paid or credited, and of the amount thereof, and unless such returns are duly made, the bank shall not be entitled to any relief in respect of any such sums. Any such return shall be made on or before the first day of May in the year following that in respect of which exemption is claimed.

(4) A society registered under the Industrial and Provident Societies Act, 1893, shall be entitled to exemption from tax under Schedules C and D, unless it sells to persons not members thereof, and the number of its shares is limited by its rules or practice, but no member of or person employed by the society shall be exempt from charge to the tax to which he would otherwise be liable.

(5) An approved society within the meaning of Part I. of the National Insurance Act, 1911, and any branch of such a society, shall be entitled to exemption in respect of the income derived from any funds or credits of the society under that Part of that Act, or any investment thereof, and the Insurance Commissioners, the Scottish Insurance Commissioners, the Irish Insurance Commissioners, and the Welsh Insurance Commissioners, shall be entitled to a similar exemption in respect of any income derived from any funds held by them, or under their control or management, under or for the purposes of that Act.

Any such exemption shall be in addition to and not in derogation of any other exemption.

(6) An insurance committee established under Part I. of the National Insurance Act, 1911, shall in respect of income derived from any funds or credits of the committee under the National Insurance (Health) Acts, 1911 to 1918, or any investment thereof, and the trustees of the special fund constituted by subsection (6) of section forty-eight of the National Insurance Act, 1911, as amended by the National Health Insurance Act, 1918, shall in respect of income derived from that fund, be entitled to exemption from tax, and the National Health Insurance Joint Committee shall be entitled to a similar exemption in respect of any income derived from any funds held by that committee or under the control or management of that committee under or for the purpose of the National Insurance (Health) Acts, 1911 to 1918.

Any such exemption shall be in addition to and not in derogation of any other exemption.

(*n*) Substituted, Finance Act, 1920, s. 32, and Third Sched.

40.—(1) Any claim under the last three preceding sections shall be made to the special commissioners in writing, in such form as may be prescribed by the Commissioners of Inland Revenue, and the special commissioners on proof of the facts to their satisfaction shall allow such claim accordingly:

Provided that any claim under section thirty-eight or any claim under subsection (1) of section thirty-nine of this Act as to tax under Schedule A may be made to the general commissioners.

(2) The special commissioners shall require every such claim to be verified by affidavit, and proof of the claim may be given by the treasurer, trustee, or any duly authorised agent, on affidavit made before a general or additional commissioner for the division in which such person resides.

(3) Where the special commissioners allow a claim they shall issue an order for repayment.

(4) A person who makes a false or fraudulent claim for exemption under the said sections in respect of any interest, annuities, dividends or shares of annuities charged or chargeable under Schedule C shall forfeit the sum of one hundred pounds, and if such claim is made by any person in his own behalf he shall in addition be liable to be charged in treble the tax so chargeable.

41. Save as hereinbefore provided in the case of income accumulated until the happening of a contingency, no claim for repayment of tax under this Act shall be allowed unless it is made within three years next after the end of the year of assessment to which it relates (*o*).

Part IV.—Special Provisions.

42. (*Reduced rates of tax and other relief applicable to the service pay of sailors, soldiers, and others*) (*p*).

43.—(1) Where it is proved to the satisfaction of the commissioners by whom the assessment was made that a person assessed under Schedule D has suffered a diminution of profits or gains due to circumstances attributable directly or indirectly to the present war, whether or not those circumstances are a specific cause within the meaning of the provision relating to relief in respect of deprivation or loss of profits or gains chargeable under that Schedule, the following provisions shall apply, and the diminution of profits or gains shall not entitle the person to relief under that provision:—

(a) If within or at the end of any year of assessment as respects which this section is continued in force (*q*) by any Act, the profits or gains during that year of the person assessed are found and shown by him to have fallen short of the sum on which the assessment was made for that year, the assessment shall be

(*o*) See Finance Act, 1919, s. 17.

(*p*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(*q*) See Finance Act, 1919, s. 15; 1920, s. 14 (2).

amended as the case may require, and, if the tax charged has been paid, any tax overpaid shall be repaid in like manner as other repayments under this Act:

(b) Provided that no reduction or repayment shall be made unless the profits of the year of assessment are proved to be less than the profits for one year on the average of the last three years, including the year of assessment, nor shall any relief granted extend to any greater amount than the difference between the sum on which the assessment was made and such average profits for one year.

(2) Where the person assessed is a person who, in connection with the aforesaid war, is or has been serving during any year of assessment as respects which this section is continued in force by any Act as a member of any of the naval or military forces of the Crown, or of the Air Force, or in any work abroad of the British Red Cross Society, or the Saint John Ambulance Association, or any other body with similar objects, the provisions of paragraph (b) of the last preceding subsection shall not apply.

(3) The provisions of this Act relating to the statement of a case on a point of law shall apply to cases in which relief is claimed under this section.

44. If any individual, who has been assessed or charged to tax for any year of assessment as respects which this section is continued in force (*q*) by any Act, claims and proves, in manner provided by this Act, that his actual income from all sources for that year is less by more than ten per cent. than the income on which he has been so assessed and charged, he shall be entitled to repayment of such part of any tax paid by him, either by way of deduction or otherwise, as is equal to the difference between the amount of the tax so paid and the amount which would have been so paid if he had been assessed or charged on his actual income for the said year.

45.—(1) In any year of assessment to which this section applies, the total income of a person from all sources by reference to which a limit to the relief granted in respect of the premiums on insurance policies is calculated, shall be taken to be and to have been the total income from all sources estimated in accordance with this Act for the year ending the fifth day of April nineteen hundred and fourteen, where such total income is or was greater than the income by reference to which the said limit would be calculated but for this section.

(2) This section shall apply to any year of assessment which includes any time during which the present war continues.

46.—(1) Where the Treasury have before the commencement of this Act issued or may thereafter issue any securities which they have power to issue for the purpose of raising any money or any loan, with a

(*q*) See Finance Act, 1919, s. 15; 1920, s. 14 (2).

condition that the interest thereon shall not be liable to tax or super-tax, so long as it is shown, in manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest of securities issued with such a condition shall be exempt accordingly.

(2) Where securities so issued for the time being form part of the investments of the foreign life assurance fund of an assurance company, the income arising from those securities, if applied for the purposes of that fund or re-invested so as to form part of that fund, shall not be liable to tax.

(3) Where the special commissioners are satisfied that any income arising abroad from the investments of the foreign life assurance fund of an assurance company has been remitted to the United Kingdom and invested, as part of the investments of that fund, in any such securities issued as aforesaid, that income shall not be liable to tax, and any tax paid thereon shall, if necessary, be repaid to the company.

(4) Where any securities have before the commencement of this Act been issued or are hereafter issued in the United States of America by a municipal corporation, county council or other local authority in the United Kingdom for the purpose of raising any money which they are authorised to borrow, the securities, if issued under the authority of the Treasury, shall not be liable to tax or super-tax, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident in the United Kingdom.

The expression "local authority" in this subsection includes the Metropolitan Water Board and any other public body which is recognised as a local authority for the purposes of this subsection by the Local Government Board.

47.—(1) The accumulated interest payable in respect of any war savings certificate issued by the Treasury through the Post Office, under which the purchaser, by virtue of an immediate payment of fifteen shillings and sixpence, becomes entitled after five years to receive the sum of one pound, shall not be liable to tax so long as the amount of the certificates held by the person who is for the time being the holder of the certificate, does not exceed the amount which an individual is for the time being authorised to hold under regulations made by the Treasury.

(2) Where the currency of any war savings certificate has been extended under *any Act* (*r*), the foregoing provisions of this section shall apply with respect to any interest payable in respect of the certificate for the period after the expiration of five years from the date on which it was issued up to the date on which it is repaid or redeemed as it applies to the said accumulated interest.

48.—(1) Where any securities have been issued in connection with any Government loan raised for the purposes of the present war and

(*r*) Words substituted by Finance Act, 1919, s. 24.

such securities were issued subject to the condition that the interest thereon should be exempt from assessment to tax, but should not be exempt from super-tax, the interest on the securities shall be exempt from assessment to tax, but shall not be exempt from super-tax.

(2) The interest on any such securities shall, for the purposes of super-tax and for the purposes of any relief from tax which depends on the total income from all sources, be treated as part of the total income from all sources as if the amount actually received represented net income after deduction of tax at the highest current rate; but nothing in this provision shall be construed as entitling any person to the repayment of any sum on account of tax on the ground that he is to be treated as having paid tax at such rate as aforesaid on the interest so exempt.

49.—(1) The interest on any stock inscribed in the Post Office Stock Register under the provisions of the War Loan (Supplemental Provisions) Act, 1915, where the stock does not exceed the nominal amount of two hundred pounds shall be paid without deduction of tax, but any such interest shall be chargeable under Case III. of Schedule D.

(2) The Treasury may direct that any Exchequer bonds, issued under their authority during the continuance of the present war and a period of six months thereafter, and any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending those Acts shall be issued, or shall be deemed to have been issued, subject to the condition that the interest on the bonds and securities shall be paid without deduction of tax, and the interest shall be so paid accordingly, but any such interest shall be chargeable under Case III. of Schedule D.

(3) Where interest on any securities issued in connection with any Government loan raised for the purposes of the present war is paid without deduction of tax, any person by whom such interest is paid, and any person who receives on behalf of any other person being a registered or inscribed holder of any such security any interest so paid without deduction of tax, and any person who has acted as intermediary in the purchase of any securities on which the interest is payable without deduction of tax, shall, on being so required by the Commissioners of Inland Revenue, furnish to them—

(i) the names and addresses of the persons to whom such interest has been paid or on whose behalf such interest has been received or on whose behalf such securities have been purchased;

(ii) the amount of the interest so paid or received, or the amount of the securities so purchased.

50.—(*Provision for postponement of payment of super-tax when income has diminished*) (*s*).

51. Where it is proved to the satisfaction of the special commissioners—

(a) that any individual, in connection with the present war, is or has

(*s*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

been, during any year of assessment, serving as a member of any of the military or naval forces of the Crown or of the Air force, or in any work abroad of the British Red Cross Society, or the Saint John Ambulance Association, or any other body with similar objects; and

(b) that the total income of that individual from all sources for that year is or was less than his total income from all sources for the previous year;

the total income of that individual from all sources for the purposes of super-tax for that year shall be taken to be his total income from all sources for that year, estimated in the same manner as, under this Act, his total income for the previous year is required to be estimated for the purposes of super-tax, and where the tax has been paid repayment shall be made accordingly.

52. (*Definition of naval, military, and Air force service*) (*t*).

53.—(1) Where, in calculating for the purposes of Part II. of the Munitions of War Act, 1915, the profits of a controlled establishment, a deduction has been allowed under that Part of that Act, or rules made thereunder, in respect of exceptional depreciation or obsolescence of buildings, plant or machinery, and the sums so deducted have not been deducted or allowed in computing the amount upon which tax has been paid in respect of those profits, there shall be allowed a repayment of tax equal to the amount of the tax at the rate at which that tax has been paid, on the amount of the sums so deducted:

Provided that the repayment of tax under this section—

(a) shall be made in respect of the year of assessment which includes the end of the period of assessment in respect of which the said deductions have been allowed under the Munitions of War Act, 1915; and

(b) shall be deemed to have effected a reduction of the income tax assessment by the amount upon which tax has been so repaid.

(2) Where a deduction on account of any of the matters specified in subsection (1) of this section has been allowed for the purposes of excess profits duty in calculating the profits of a controlled establishment for any period during which it is subject to control, this section shall, subject to the necessary modifications, apply as it applies where a deduction has been allowed in calculating the profits of a controlled establishment for the purposes of Part II. of the Munitions of War Act, 1915:

Provided that a repayment of tax shall not be allowed under this subsection and also under subsection (1) of this section in respect of the same deduction.

(3) The provisions of this Act relating to the allowance of a deduction during succeeding years for wear and tear of machinery or plant where full effect cannot be given to any such deduction in any year shall apply,

(*t*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

with the necessary modifications, with respect to any repayment of tax under this section.

(4) Any application for relief under this section shall be made to the commissioners by whom the income tax assessment has been made, and those commissioners, upon proof of the facts to their satisfaction, shall certify to the Commissioners of Inland Revenue the sum repayable, and the Commissioners of Inland Revenue shall cause repayment to be made accordingly.

54.—(1) Where, in addition to any other tax or super-tax charged for any year, an additional duty (*u*) of income tax is charged in respect of any part of the income of any person to which this section applies, that additional duty shall be charged, levied and paid in accordance with the provisions of this section.

The income to which this section applies is the income derived from securities which are for the time being included in the Treasury special list as defined by this section, while those securities are so included; . . .

. . . . . .

55. (*Relief in respect of colonial income tax*) (*x*).

56. The provisions of this Act relating to the deduction to be allowed in respect of diminished value by reason of wear and tear shall have effect as if the references therein to diminished value by reason of wear and tear during the year of any machinery or plant included references to diminished value by reason of any machinery or plant having been temporarily out of use at any time during the year through circumstances attributable, directly or indirectly, to the present war.

Part V.—Administration.

. . . . . .

Part VI.—Assessment.

Provisions as to Assessment.

98.—(1) The assessors appointed to execute this Act shall, within the time, and in the manner, directed by the precept of the general commissioners, cause general notices to be given, requiring all persons who, by this Act, are required to make out and deliver any list, declaration, or statement, to make out and deliver the same to the respective assessors as therein directed within such time as shall be limited by the precept, not being later than twenty-one days from the date of the precept.

(2) General notices shall be given by affixing a notice on, or near to, the door of the church or chapel and market house or cross (if any) of

(*u*) Such an additional duty has not been in force since the year ending 5th April, 1919, for which it was imposed by Finance Act, 1918 (8 & 9 Geo. 5, c. 15), s. 17. It is therefore thought unnecessary to set out here the remainder of this long section.

(*x*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched. See now sect. 27 of that Act.

the parish for which the assessors act or, if the parish has no church or chapel or market house or cross, then on or near to the door of the church or chapel nearest to the parish.

(3) The general notices so affixed shall be deemed sufficient notice to all persons resident in the parish, and the affixing of the same, in manner aforesaid, shall be deemed good service thereof.

(4) The assessors shall cause the notices to be from time to time replaced, if necessary, during ten days before the time required for the delivery of the said lists, declarations, and statements.

(5) Any person wilfully tearing, defacing or obliterating any such notice so affixed shall forfeit a sum not exceeding twenty pounds.

99.—(1) The assessors shall, within the time directed by the precept of the general commissioners, give a particular notice to every person chargeable within the limits wherein they act, requiring him, within such time as shall be limited by the precept, to prepare and deliver to the assessors all such lists, declarations, and statements as are required by this Act to be delivered.

(2) A particular notice may be given either personally, or by leaving a notice at the dwelling-house, place of residence or place of business of the person chargeable, or on the premises to be charged by the assessment.

100.—(1) Every person chargeable under this Act, when required to do so by any general or particular notice given in pursuance of this Act, shall, within the period limited by such notice, prepare and deliver to the assessor, a true and correct statement in writing as required by this Act, signed by him, containing—

(a) the annual value of all lands and tenements in his occupation, whether situate in one, or more than one, parish;

(b) the amount of the profits or gains arising to him, from each and every source chargeable according to the respective schedules, estimated for the period and according to the provisions and rules of this Act.

(2) To the said statement shall be added a declaration that such values or amounts are estimated in respect of all the sources of income mentioned in this Act, describing the same, after deducting only such sums as are allowed.

(3) Every such statement shall be made exclusive of any interest of money or other annual payment arising out of the property of any other person charged in respect thereof.

(4) Every person upon whom a particular notice has been served by an assessor requiring him to deliver a statement of any profits, gains, or income in respect of which he is chargeable under Schedule D or Schedule E, shall deliver a statement in the form required by the notice, whether or not he is so chargeable:

Provided that the penalty inflicted upon any person proceeded against for not complying with this provision who proves that he was not chargeable to tax, shall not exceed five pounds for any one offence.

101.—(1) Every person acting in any character on behalf of any incapacitated person or person not resident in the United Kingdom who, by reason of such incapacity or non-residence in the United Kingdom, cannot be personally charged under this Act, shall, whenever required to do so by any general or particular notice, within the like period, and in any parish in which he may be chargeable on his own account, deliver such a statement as in the last preceding section is described of the profits or gains in respect of which the tax is to be charged on him on account of that other person, together with the prescribed declaration.

(2) Where two or more such persons are liable to be charged for the same person—

(a) one statement only shall be required to be delivered which may be made by them jointly, or by any one or more of them; and

(b) notice in writing may be given by any such persons to the general commissioners for each division in which they are called upon for a statement stating in which parish or parishes they are respectively chargeable on their own account, and in which of those parishes they desire to be charged on behalf of the person for whom they act, and they shall, if any one of them be liable to be charged on his own account in that parish, be charged therein accordingly by one assessment.

102.—(1) If any person shall come into a parish in which he has not been charged to tax, the assessor, collector, or surveyor may give him notice in writing to deliver, within fourteen days from the giving of the notice—

(a) a declaration in writing, signed by him, specifying the parish and county in which he has been assessed; or

(b) in default thereof, a statement in order that he may be assessed and charged in the parish into which he has come.

(2) A person who neglects or refuses to deliver, within the time limited, any such declaration or statement, or who makes a declaration or statement which is false or untrue in any particular, shall forfeit a sum not exceeding twenty pounds.

(3) If in any case a person who is, or who resides, in any parish has not been assessed therein, the commissioners acting for the parish may assess him, as though he had been resident there at the time of the publication of the general notices directed by this Act, unless he proves to their satisfaction that he has been duly assessed in some other parish.

103.—(1) Every person who, in whatever capacity, is in receipt of any money or value, or of profits or gains arising from any of the sources mentioned in this Act, of or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in the United Kingdom and not an incapacitated person, shall, whenever required to do so by any general or particular notice, prepare

and deliver, within the period mentioned in such notice, a list in the prescribed form, signed by him, containing—

(a) a true and correct statement of all such money, value, profits or gains;

(b) the name and address of every person to whom the same shall belong;

(c) a declaration whether every such person is of full age, or a married woman living with her husband, or a married woman whose husband is not accountable for the payment of any tax charged on her, or is resident in the United Kingdom or is an incapacitated person.

(2) If any person above described is acting jointly with any other person, he shall, in like manner, deliver a list of the names and addresses of all persons joined with him at the time of delivery of the list mentioned in the last preceding subsection.

(3) (a) A trustee who has authorised the receipt of profits arising from trust property by the person entitled thereto, or by the agent of such person, if that person or agent shall actually receive the same under that authority; or

(b) An agent or receiver of any person resident in the United Kingdom, other than an incapacitated person,

shall not, if he returns a list, as required by this section, of the name, address and profits of that person, be required to do any other act for the purpose of the assessment of that person, unless the commissioners acting in the execution of this Act in respect of the assessment to be made on that person, require the testimony of the trustee, agent, or receiver, as the case may be, in pursuance of the provisions of this Act.

104. Every person, when required to do so by a general or particular notice under this Act, shall, within the time limited thereby, prepare and deliver to the assessor a list, in writing, containing to the best of his belief—

(a) the name of every lodger or inmate resident in his dwelling-house; and

(b) the name and ordinary place of residence of any such lodger or inmate who has any ordinary place of residence elsewhere at which he can be assessed and who desires to be assessed at such ordinary place of residence.

105.—(1) Every employer, when required to do so by notice from an assessor, shall, within the time limited by the notice, prepare and deliver to the assessor a return containing—

(a) the names and places of residence of all persons employed by him; and

(b) the payments made to those persons in respect of that employment, except persons who are not employed in any other employment

and whose remuneration in the employment for the year does not exceed *one hundred and fifty pounds* (*y*),

and the provisions of this Act with respect to the failure to deliver lists, declarations, and statements, in accordance with a general or particular notice, shall apply to any such return:

Provided that an employer shall not be liable to any penalty for omitting from any such return the name or place of residence of any person employed by him and not employed in any other employment, if it appears to the general commissioners, on inquiry before them, that such person is entitled to total exemption from tax.

(2) Where the employer is a body of persons, the secretary of the body, or other officer (by whatever name called) performing the duties of secretary, shall be deemed to be the employer for the purposes of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

(3) This section shall extend, in the case of weekly wage-earners to whom the provisions of this Act as to quarterly assessment apply, so as to enable returns to be required at such times and intervals as may be fixed by regulations made by the Commissioners of Inland Revenue.

(4) Where an employer is a body corporate (including a company), that body corporate shall be liable to a penalty for failure to deliver a return in pursuance of this section, as well as the secretary or other officer performing the duties of secretary of the body corporate.

106.—(1) The chamberlain or other officer acting as treasurer, auditor or receiver for the time being of any body of persons chargeable to tax, shall be answerable for doing all such acts as are required to be done under this Act, for the purpose of the assessment of such body and for payment of the tax, and for the purpose of the assessment of the officers and persons in the employment of such body:

Provided that, in the case of a company, the person so answerable shall be the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

(2) Every such officer as aforesaid may from time to time retain out of any money coming into his hands, on behalf of the body, so much thereof as is sufficient to pay the tax charged upon the body, and shall be indemnified for all such payments made in pursuance of this Act.

107.—(1) A person who neglects or refuses to deliver, within the time limited in any general or particular notice, or wilfully makes delay in delivering a true and correct list, declaration, or statement, which he is required under this Act to deliver, shall—

(a) if proceeded against before the general commissioners, forfeit a sum not exceeding twenty pounds and treble the tax which he ought to be charged under this Act, and such penalty shall be recovered in the same manner as any other penalty under this Act, and the increased tax shall be added to the assessment; or

(*y*) Words substituted, Finance Act, 1920, s. 32, and Third Sched.

(b) if proceeded against by action or information in any court, forfeit a sum of fifty pounds.

(2) The commissioners shall also proceed to assess or cause to be assessed every such person who makes default as aforesaid.

(3) If any person who is required to deliver a list, declaration, or statement on behalf of any other person, delivers an imperfect list, declaration, or statement, and declares himself unable, within the time limited to deliver a more perfect list, declaration, or statement, and states the reasons for his inability, he shall not, if the said commissioners are satisfied with his explanation and grant further time for delivery, be liable to the penalty prescribed by this section, if he delivers, within the further time granted, as perfect a list, declaration, or statement as the nature of the case permits.

(4) Provided as follows:—

(a) If it appears to the commissioners, on enquiry before them, that a person, to or on whom the assessor has not delivered or served a particular notice, is entitled to exemption from tax, that person shall not be liable to any penalty for not delivering a statement:

(2) A person chargeable in any department of office by commissioners specially appointed to act for that department, in respect of profits arising from an office, pension, or stipend, shall not be liable to any penalty for not delivering a statement thereof unless the assessor for that department has required a statement from him by a particular notice.

108.—(1) The assessor shall make out and deliver to the surveyor of the district a list containing—

(a) the names of all persons to or on whom notices have been delivered or served in pursuance of this Act;

(b) the names of all persons chargeable within the limits of the assessor, distinguishing those who have duly delivered statements, and those who have not, and those who have given notice to be assessed by the special commissioners;

(c) the names of all persons who have been returned as lodgers or inmates within the aforesaid limits, or as chargeable within, but having a residence outside, the same;

(d) the names of all persons employed by any employer within the aforesaid limits who have been returned to the assessor in accordance with the provisions of this Act.

(2) The assessor for every parish shall appear personally before the general commissioners, at a meeting appointed by them, and shall make oath, before them, that the general notices prescribed by this Act have been duly affixed and that, to the best of his knowledge, all notices required to be delivered or served have been duly delivered or served, and that the list delivered by him to the surveyor contains the name of every person, within his knowledge, to or on whom notice was required to be delivered or served.

(3) If any assessor neglects to appear before the said commissioners, refuses to take the oath, or omits or neglects to return to the surveyor the name of any person whose name ought to be included in any such list, he shall forfeit a sum not exceeding twenty pounds.

109. The surveyor may at any time cause a notice to be delivered or served—

(a) to or on any person to whom the assessor has neglected to give a notice which ought to have been given; and

(b) to or on any person coming to reside in any parish after the expiration of the general notices prescribed by this Act.

110.—(1) The assessments under Schedules A and B for any parish shall contain—

(a) the full and just annual value of all lands, tenements, hereditaments and heritages estimated in each particular case as directed by this Act; and

(b) the names of the occupiers and proprietors thereof.

(2) Such assessments, together with all statements which have been delivered to the assessors, both of annual value and of any deductions claimed to be made therefrom, shall be progressively numbered.

111. (*Instruction and assistance of assessors.*)

112. If the assessor does not receive a statement from a person liable to be charged to tax, he shall to the best of his information and judgment—

(a) make an assessment upon that person of the amount at which he ought to be charged under Schedules A, B, and E; and

(b) estimate the amount at which that person ought to be charged under Schedule D, and make a return to the commissioners of the name and address of that person and of any other particulars which the commissioners may require.

113. (*Delivery and examination of assessments and statements.*)

114. (*Inspection of parish books.*)

115. (*Production of rate books to general commissioners.*)

116.—(1) If—

(a) a person chargeable does not, after due notice under this Act, deliver a statement of the annual value of property in his occupation, estimated according to the provisions and rules applicable to the case; or

(b) the commissioners are not satisfied with any statement which has been delivered,

the assessor or surveyor, as the case may be, on obtaining a signed order of the general commissioners to that effect, and after two days' notice to the occupier, may, with the assistance of a person or persons of skill named in the order, at all seasonable times in the daytime, view and examine any lands or property chargeable, in order to make a survey

thereof, or otherwise to ascertain the annual value at or by reference to which the same ought to be charged, and may enter upon any lands or grounds, whether enclosed or not, and measure and survey the same, if he cannot otherwise ascertain the annual value thereof.

(2) This section shall not apply within the administrative county of London.

117. (*Powers of assessors for public departments.*)

118.—(1) The clerks to the respective general commissioners shall, with all convenient speed, abstract the particulars contained in the lists and statements delivered to the commissioners, into books provided for the purpose, and according to the forms prescribed by the Commissioners of Inland Revenue.

(2) The abstracts shall contain the names of the persons delivering such lists and statements, and the several amounts of profits returned by them respectively, and shall be delivered to the commissioners.

(3) Every surveyor who has made the prescribed declaration shall be allowed free access to the books of abstract at all seasonable times and may take copies of or make extracts from the same.

119.—(1) The surveyor may examine all statements and assessments made for any parish for any year of assessment, whether the said assessments have been signed and allowed or not.

(2) Every person having the custody of any statement shall, on request of the surveyor, deliver it into his custody, taking his receipt for the same; and every person having the custody of any assessment shall, on the like request, produce the same to the surveyor, who may take charge of it until he has taken such copies or extracts as may be necessary.

120.—(1) The general commissioners shall take into consideration the assessments under Schedules A, B, and E, delivered by the assessors, after they have been examined by the surveyor, and if he has not objected to the assessments and the commissioners are satisfied that they have been made truly and without fraud, and so as to charge the persons, properties, and profits to which they relate with the full tax which ought to be charged, they shall sign and allow them.

(2) If the surveyor objects to, and applies for the revision of, any such assessment, and suggests, in writing, to the general commissioners any error, mistake, omission, or fraud in making the same, the commissioners shall, to the best of their judgment, rectify the assessment, so that the proper tax may be fully charged according to the intent and meaning of this Act.

121.—(1) Statements of profits or gains under Schedule D shall, unless an assessment thereon is required to be made by the special commissioners, be laid before the additional commissioners.

(2) Within a reasonable time after the surveyor has examined the statements, the additional commissioners shall appoint meetings for the

consideration of all such statements as are then, or from time to time, delivered to them.

(3)—If

(a) the additional commissioners are satisfied that a statement has been bonâ fide made in accordance with this Act, and so as to enable them to assess the person with the full tax which ought to be charged; and

(b) no information is given to the additional commissioners as to the insufficiency of the statement, and the surveyor makes no objection thereto, which he is hereby authorised to make for sufficient cause,

the additional commissioners shall direct an assessment to be made in accordance with the statement:

Provided as follows:—

(i) If the surveyor then declares himself dissatisfied with the determination of the said additional commissioners, as not being in accordance with the true intent and meaning of this Act, he may require them to state and sign a case, giving their determination thereon, for the opinion of the general commissioners for the division, which they shall sign and state accordingly:

(ii) The case so stated and signed shall be delivered to the surveyor, who shall transmit it to the general commissioners. The general commissioners shall, with all convenient speed, return the case with their opinion subscribed thereon, and the assessment shall be altered or confirmed accordingly.

(4)—If

(a) a person makes default in the delivery of a statement in respect of any tax under Schedule D with which he has not been otherwise charged; or

(b) the additional commissioners are not satisfied with a statement which has been delivered, or have received any information as to its insufficiency; or

(c) the surveyor makes an objection in writing to a statement as aforesaid, setting forth the cause thereof,

the additional commissioners shall make an assessment on the person concerned in such sum as, according to the best of their judgment, ought to be charged on him.

(5) The additional commissioners may refer any statement to the general commissioners, without making any assessment thereon, by delivering to them a case in writing setting forth the matters in question, either of law or of fact, relating thereto, and the general commissioners shall proceed to enquire into the merits of such statement, in the like manner as they are authorised to do in the case of an appeal against an assessment, and thereupon an assessment shall be made in accordance with the determination of the general commissioners.

(6) The surveyor may, at all seasonable times, examine any assess-

ment made by the additional commissioners before it is delivered to the general commissioners, and, if he discovers any error requiring amendment, he shall certify the same to the commissioners by whom the assessment was made, who, on sufficient cause shown to them, shall make any amendment which they consider is required.

(7) If the surveyor makes an objection in writing to the additional commissioners, which he is hereby authorised to do upon sufficient cause, as to the amount of an assessment made by them, they shall certify his objection, together with their reasons for making the assessment, and any information they have obtained respecting it, to the general commissioners.

(8) The surveyor shall give notice of his objection and particulars thereof to the person assessed, in order that he may appear before the general commissioners in support of the assessment.

122.—(1) The additional commissioners shall, as their assessments are from time to time completed, cause to be made out and entered in books provided for the purpose, certificates of assessments, in the form prescribed by the Commissioners of Inland Revenue, distinguishing the parish for which each assessment is made, and containing—

(a) the names, surnames, and addresses of the persons assessed, progressively distinguished by numbers or letters; and

(b) the sums which ought to be paid by them respectively.

(2) The assessments shall be signed by the additional commissioners, and shall be delivered from time to time, together with the statements delivered by the persons assessed, and any particulars furnished by the respective assessors relating to the assessments, under cover sealed up, to the general commissioners, but no notice of any such assessment shall be delivered to any person assessed until fourteen days after the surveyor has had notice of the delivery of the assessments, so signed as aforesaid, to the general commissioners.

(3) The assessments under Schedule D, certified and delivered by the additional commissioners to the general commissioners shall be allowed and confirmed by the general commissioners after the time for hearing appeals against such assessments has expired.

123.—(1) A person chargeable under Schedule D, who does not claim the exemption granted in a case where the total income from all sources does not exceed one hundred and thirty pounds a year, may require that all proceedings in order to an assessment upon him under that schedule shall be taken before the special commissioners, instead of before the additional or the general commissioners, and in that case shall deliver a notice of his request to the assessor of the parish, together with the statement of his profits or gains, for transmission to the surveyor of the district. The notice and statement shall be delivered within the time limited by the general notice under this Act for delivery of lists and statements.

(2) The surveyor shall, after examining the statement, make an assess-

ment to the best of his judgment, and deliver a certificate thereof, together with the statement, to the special commissioners, who, after examination thereof, shall sign and allow such an assessment as appears to them just and proper, which shall be subject to appeal as hereinafter provided.

(3) The special commissioners shall notify the amount of the charge to the person charged, who shall pay the tax to the proper officer.

124. Assessments in respect of the annual value or profits or gains arising from a railway shall be made by the special commissioners, who shall notify their assessment to the secretary or other officer of the company upon which it is made, and the amount of the assessment shall be paid, collected, and levied in like manner as any other assessment made by the special commissioners.

Additional Assessments.

125.—(1) If the surveyor discovers—

that any properties or profits chargeable to tax have been omitted from the first assessments; or

that a person chargeable has not delivered any statement, or has not delivered a full and proper statement, or has not been assessed to tax, or has been undercharged in the first assessments; or

that a person chargeable has been allowed, or has obtained from and in the first assessments, any allowance, deduction, exemption, abatement, or relief not authorised by this Act,

then and in every such case—

(i) where the tax is chargeable under Schedule A, B, or E:—

(a) If the first assessments have not been signed and allowed, the surveyor shall amend the assessment and assess the person liable to the full amount, and at the full rate of tax, at which he ought to be charged;

(b) If the first assessments have been signed and allowed, the surveyor shall certify the particulars to the general commissioners, who shall sign and allow an additional first assessment in accordance therewith:

Provided that any such additional first assessment shall be subject to appeal and other proceedings as in the case of a first assessment:

(ii) where the tax is chargeable under Schedule D, the additional commissioners shall make an assessment, on the person chargeable, in an additional first assessment, in such a sum as, according to their judgment, ought to be charged, and any such assessment shall be subject to objection by the surveyor, and to appeal.

(2) An assessment may be amended, or an additional first assessment may be made at any time not later than three years after the expiration of the year of assessment.

(3) Any assessments not made at the time when the first assessments are signed and allowed shall, as soon as they are made, be added to the first assessments, and to the respective duplicates thereof, by means of separate forms of assessment and duplicate.

Surcharges.

126.—(1) If the surveyor discovers that a person liable to tax has not been charged in respect thereof in any first or additional first assessment, he may, at any time within three years after the expiration of the year of assessment for which that person ought to have been charged, surcharge, to the best of his judgment, the person liable, to the amount which ought to have been charged for that year.

(2) In every such case the surveyor shall certify the particulars of the omission, and of the surcharge, to the general commissioners, and shall give to any person so surcharged notice of the surcharge and particulars thereof.

(3) The general commissioners, upon the delivery of the certificate and upon oath being made, by the surveyor or some other credible witness, that service of the notice of surcharge has been duly made upon the person surcharged, shall sign and allow the certificate, as hereinafter prescribed, subject to appeal.

(4) Any such certificate of surcharge shall not be signed or allowed, nor shall any appeal against the surcharge be heard, by the general commissioners, before the expiration of ten days after service of the notice of surcharge.

(5) The certificate of the surveyor, together with the oath of service of the notice of surcharge, shall be sufficient proof of the contents thereof, unless, on the production of the notice to the general commissioners, the contrary is shown by the person surcharged, and no other proof than as aforesaid of the contents of any such notice shall be required before the certificate is signed and allowed, or on appeal therefrom, or in any matter relating thereto.

(6) The oath of service of notice of surcharge shall be to the effect that a notice was duly served, upon each person mentioned in the certificate, containing the particulars as set forth therein, on the day or days mentioned in the certificate.

127.—(1) A person to whom such a notice of surcharge has been given may, whether he has previously delivered a statement or not, within ten days from the service of the notice—

(a) deliver to the surveyor a true and perfect return, containing all the particulars required by this Act; or

(b) give notice in writing to the surveyor that he abides by the statement previously delivered by him.

(2) To such return or notice shall be annexed a declaration signed by the person to whom the notice of surcharge was given, and further signed

and attested by one or more credible witnesses, and the declaration shall state, as the case may require—

(a) the grounds and cause of the neglect to deliver a statement; or

(b) the grounds and cause of every omission made, or stated in the notice of surcharge to have been made, in any statement delivered by him; or

(c) the grounds and cause of every claim of exemption, abatement, relief, allowance, or deduction made in any such statement; and

(d) that the statement by which he abides, or the return to which the declaration is annexed, is a true and perfect return of all particulars required by this Act, to the best of the judgment and belief of the declarant; and

(e) that any neglect, omission, or claim was not made with intent to defraud the revenue.

(3) If a person, in any such declaration as aforesaid, wilfully and fraudulently declares anything which is false, he shall be guilty of a misdemeanour, and shall be liable to imprisonment not exceeding six months, and to a fine not exceeding treble the amount of tax for which he has been surcharged, as the court shall order.

The indictment for any such misdemeanour shall be laid in the county in which the declaration was exhibited to the general commissioners.

(4) If the surveyor is satisfied with the statement or return and the declaration, he may certify his satisfaction therewith to the general commissioners, and the commissioners shall thereupon cause the person surcharged to be charged on the amount set forth in the statement or return, in single rate of tax.

128.—(1) The surveyor may object to any such statement, return, or declaration, and in that case—

(a) he shall serve notice of objection on the person surcharged; and

(b) he shall certify the statement or return and the declaration, together with the cause of his objection, to the general commissioners.

(2) The general commissioners shall thereupon cause a charge to be made, in accordance with the said certificate of objection, and no abatement shall be made therefrom, except upon an appeal by the person surcharged.

129.—(1) If, within ten days after the service of the notice of surcharge, the person surcharged delivers a return and declaration to which the surveyor objects, that delivery shall operate as a notice of appeal to the general commissioners against the surcharge.

(2) If the person surcharged does not, before the expiration of ten days after service of the notice of surcharge, deliver a return or declaration, the general commissioners may, if he or his agent appears upon the day appointed for hearing appeals against surcharges and delivers a return and declaration as is herein required, hear and determine the

matter, although the person surcharged has not given notice of his intention to appeal.

(3) If, upon the said day, neither the person surcharged nor his agent appears, or in default of the delivery of a return or declaration as aforesaid, the general commissioners shall confirm the certificate of surcharge.

(4) If—

(a) the commissioners do not meet before the time limited for the hearing of appeals from the surcharges of the surveyor; or

(b) the surveyor has not had notice of a meeting of the commissioners,

the commissioners shall, at their next subsequent meeting, sign and allow the certificates, and afterwards hear and determine all appeals therefrom.

(5) No surcharge shall be allowed and signed unless the certificate thereof has been delivered to the general commissioners within three years after the expiration of the year of assessment in respect of which the surcharge is made.

(6) In default of a meeting of the commissioners, the delivery of a certificate of surcharge by the surveyor to their clerk shall be a sufficient delivery.

130.—(1) A certificate of surcharge, as aforesaid, shall be sufficient authority to the general commissioners for causing supplementary assessments to be made from time to time.

(2) Supplementary assessments shall include—

(a) all surcharges according to the certificates of surcharge, amended in cases requiring amendment, according to the determination of the commissioners;

(b) all treble tax, or any part thereof, assessed over and above the rate or rates of tax prescribed; and

(c) all penalties imposed by the commissioners for offences under this Act.

Weekly Wage-earners.

131. The Commissioners of Inland Revenue may make regulations generally, with respect to the assessment, charge and collection of income tax, in the case of weekly wage-earners to whom the provisions of this Act with regard to quarterly assessment apply, and with respect to the procedure to be adopted for the purpose, and may, in particular, by those regulations in the case of those weekly wage-earners, provide for assessment and charge by the surveyor, and for collection by a collector appointed by them, and for the application of the provisions and rules applicable to Schedule E, in cases where those provisions and rules are not otherwise applicable, but the right of appeal to the general commissioners shall not be affected.

Provisions against Fraudulent Practices.

132.—(1) Where a person who ought to be charged with tax, as directed by this Act, is not duly assessed and charged by reason that he has—

(a) fraudulently changed his place of residence or fraudulently converted, or fraudulently released, assigned, or conveyed any of his property; or

(b) made and delivered any statement or schedule which is false or fraudulent; or

(c) fraudulently converted any of his property, which was chargeable, by altering any security relating thereto or by fraudulently rendering it temporarily unproductive, in order not to be charged for the same or any part thereof; or

(d) been guilty of any falsehood, wilful neglect, fraud, covin, art or contrivance whatsoever,

such person shall, on proof thereof to the general commissioners for the division in which he has been charged, or, if he has not been charged, then for any division in which he is chargeable, be assessed and charged treble the amount of the charge which ought to have been made upon him:

Provided that, if any charge has been made, but that charge is less than the charge which ought to have been made, such person shall be assessed and charged, over and above the former charge, treble the amount of the difference between the charge which was made and the charge which ought to have been made, such amount to be added to the assessment.

(2) A person who knowingly and wilfully aids, abets, assists, incites or induces another person to make or deliver a false or fraudulent account, statement, or declaration, of or concerning any profits or gains chargeable, or the yearly rent or value of any lands, tenements, hereditaments, or heritages, or any matters affecting any such rent or value, shall for every such offence forfeit the sum of fifty pounds.

Part VII.—Appeals.

133.—(1) (a) Save where expressly authorised by this Act, the general commissioners shall not alter any assessment before the time for hearing and determining appeals, and then only in cases of assessments appealed against, and in accordance with their determination.

(b) If the clerk to the commissioners or any other person makes, causes, or allows to be made, in any assessment, any unauthorised alteration, he shall incur a penalty of fifty pounds.

(2) An appeal, once determined by the commissioners, shall be final, and neither the determination of the commissioners, nor the assessment made thereon, shall be altered, except by order of the court when a case has been required as provided by this Act.

(3) Where an objection has been made by the surveyor to an assess-

ment upon any person, and that objection has been dealt with and determined on appeal, the surveyor shall not, thereafter, make any further charge for the same year, upon that person, in respect of the same matter, property, or profits included in the assessment to which the objection, so determined, was made.

134.—(1) As soon as the assessments under Schedules A and B for any parish have been signed and allowed, the general commissioners shall cause notice thereof, and of the day for hearing appeals therefrom, to be given in such manner as they deem expedient.

(2) Any such notice may be given—

(a) by delivering a copy of the assessment to the assessor of the parish for inspection by the persons assessed, together with a notice of the day of appeal, to be affixed on or near to the church door or on any other public place in the parish; or

(b) by delivering to each person assessed a notification of the amount of his assessment and of the day of appeal.

(3) With respect to assessments under Schedule D, the general commissioners shall cause a general notice to be fixed up in their office, or left with their clerk, and also to be affixed on or near the door of the church or chapel of each parish or if there be no such church or chapel in any such parish, of the church or chapel of some adjoining parish, limiting a reasonable time for hearing appeals, and, except as otherwise provided in this Act, no appeal shall be heard after the time so limited.

135. Notice of appeal meetings to be held by the general commissioners shall also be given to the surveyor by the clerk to the commissioners.

136.—(1) A person aggrieved by any assessment upon him, made by the additional commissioners, or by the assessor for any parish, or by a surveyor, in any first or additional first assessment, or by any objection by the surveyor to an assessment made by the additional commissioners, shall be entitled to appeal to the general commissioners, on giving notice in writing to the surveyor, within twenty-one days after the date of the notice of such assessment or objection.

(2) Any owner or other person in receipt of the rent of any lands, although not the occupier thereof, who is aggrieved by the amount of the annual value of the lands under Schedule A shall have the same right of appeal to the general commissioners as if the assessment were made upon himself.

(3) If it be shown to the satisfaction of the general commissioners that owing to absence, sickness or other reasonable cause, any person has been prevented from appealing in due time, or from attending at the hearing of an appeal on the day fixed for that purpose, they may postpone the hearing of his appeal for such reasonable time as they think necessary, or may admit the appeal to be made by any agent, clerk or servant on his behalf.

(4) (a) On the application of any person who has been assessed, and

who has removed from the division in which the assessment was made, without having appealed in that division, the Commissioners of Inland Revenue may, if they think fit, authorise the commissioners of the division to which that person has removed to hear and determine his appeal against the assessment, and those commissioners shall proceed accordingly.

(b) Any sum from which the appellant may not be relieved on such appeal, shall be recovered and levied as if the appeal had been heard and determined by the commissioners of the division in which the assessment was made.

137.—(1) The general commissioners shall cause notice of the day for hearing appeals to be given to every appellant, and shall meet together for the hearing of appeals from time to time, with or without adjournment, until all appeals have been determined.

(2) The surveyor and the assessor may attend every appeal, and shall be entitled—

(a) to be present during all the time of the hearing, and at the determination of the appeal; and

(b) to produce any lawful evidence in support of the assessment or surcharge; and

(c) to give reasons in support of the assessment or surcharge.

(3) (a) Upon any appeal, the general commissioners may permit any barrister or solicitor to plead before them on behalf on the appellant or officers, either vivâ voce or in writing, or may hear any accountant.

(b) If the general commissioners refuse to permit a barrister or solicitor to plead before them, or to hear any accountant, the appellant may, in lieu of proceeding with his appeal before them, appeal to the special commissioners, who shall hear the barrister, solicitor, or accountant.

(c) In this subsection "accountant" means a person who has been admitted a member of an incorporated society of accountants.

(4) If, on an appeal, it appears to the majority of the commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other lawful evidence, that the appellant is overcharged by any assessment or surcharge, the commissioners shall abate or reduce the assessment or surcharge accordingly, but otherwise every such assessment or surcharge shall stand good.

(5) If, on any appeal, it appears to the commissioners that the person assessed or surcharged ought to be charged in an amount exceeding the amount claimed in the assessment or surcharge they shall charge him with the excess.

(6) (a) Appeals against surcharges shall be heard and determined in like manner as appeals against first assessments.

(b) If a surcharge is allowed on appeal by the general commissioners, in whole or in part, the assessment shall be made upon the amount of the surcharge allowed in treble the rate of tax prescribed:

Provided that, if the commissioners are of opinion—

(i) that the assessment might have been amended by the surveyor by means of the original statement of the appellant;

(ii) that the alleged default, neglect, or omission, or the claim of exemption, abatement, relief, allowance, or deduction was not wilfully made with intent to defraud the revenue;

(iii) that the appellant was prevented from making an amended return in due time by absence, sickness, or other sufficient cause;

(iv) that there was reasonable cause of doubt or controversy, on the part of the appellant, on the subject-matter of appeal;

the commissioners may remit the treble rate of tax, in whole or in part, and may charge at the single rate of tax only.

138.—(1) If on appeal against an assessment under Schedule A or Schedule B any dispute arises as to the annual value of any lands, tenements, hereditaments, or heritages, the general commissioners may, if they consider it necessary, and shall, if required by the appellant, direct the appellant to cause a valuation to be made by a person of skill named by them, and may require the same to be verified on the oath of such person, and the annual value shall be determined in accordance with that valuation.

(2) If the appellant does not proceed, with effect, to cause such valuation to be made, the commissioners shall determine the annual value according to the best of their judgment.

(3) The costs and charges of any such valuation shall abide the final determination of the commissioners, and, if the value so found exceeds the value alleged by the appellant, the commissioners may order him to pay the costs and charges of the valuation, but if they are of opinion that such costs and charges have not been incurred through any default of the appellant, they shall issue an order for the payment of the said costs and charges by the Commissioners of Inland Revenue.

(4) This section shall not apply within the administrative county of London.

139.—(1) If the general commissioners have received notice of appeal against an assessment made by the additional commissioners, or see cause to allow the objection of the surveyor to any such assessment, they shall issue a precept to the appellant ordering him to deliver to them, within the time limited by the precept, a schedule containing such particulars, for their information, as they may demand under the authority of this Act respecting—

(a) the property of the appellant; or

(b) the trade, profession, employment or vocation carried on or exercised by him; or

(c) the amount of his profits or gains, distinguishing the particular amounts derived from each separate source; or

(d) any deductions made in arriving at his profits or gains,

which particulars the said general commissioners are hereby empowered and required to demand at their discretion whenever the same shall appear to them necessary for the purposes mentioned in this Act.

(2) The general commissioners may issue further precepts whenever they consider it necessary for the purposes aforesaid, until complete particulars have been furnished to their satisfaction.

(3) A person to whom a precept is issued shall deliver the schedule required, within the time limited, and in default thereof, shall forfeit a sum not exceeding twenty pounds and treble the tax at which he ought to be charged.

(4) Any surveyor may, at all reasonable times, inspect and take copies of or extracts from any schedule.

140.—(1) A person who has delivered a statement or schedule and discovers any omission or wrong statement therein, may deliver an additional statement or schedule rectifying the same, and shall not thereafter be liable to any proceeding by reason of his omission or wrong statement.

(2) A person who has not delivered a statement or schedule, within the time limited, may deliver it at any time before proceedings for recovery of a penalty, incurred in respect of such non-delivery, have been commenced, and thereafter no such proceedings shall be taken.

(3) (a) If proceedings for recovery of any such penalty have been commenced before the general commissioners, they may, on proof to their satisfaction that no fraud or evasion was intended, stay the proceedings, either on payment of the costs then incurred, or without any such payment.

(b) If proceedings have been commenced in any court, the general commissioners may certify that in their judgment no fraud or evasion was intended, and the court may, on summary application, stay the proceedings, on such terms as to the court may seem fit.

(4) If a person has delivered an imperfect statement or schedule, and satisfies the general commissioners that there is a sufficient reason why a perfect statement or schedule cannot be delivered within due time, the commissioners shall extend the time for delivery as from time to time they think fit. During any such extension of time, a person who has delivered as perfect a statement or schedule as from the nature of the case he was able to deliver, shall not be liable to any penalty for not having delivered a statement or schedule within the time limited.

141.—(1) The surveyor may, within a reasonable time to be allowed by the commissioners to whom an appeal is made after examination by him of any schedule, object to such schedule or any part thereof, and in that case shall state, in writing, the cause of his objection, according to the best of his knowledge or information.

(2) In every such case, he shall give notice in writing of his objection, to the person to be charged in order that he may, if he thinks fit, appeal

against the same. The notice shall be under cover and sealed, and addressed to the person to be charged.

(3) No assessment shall be confirmed or altered until any appeal against such objection has been heard and determined.

142. If—

(a) the commissioners to whom an appeal is made see cause to disallow an objection of the surveyor to a schedule; or

(b) on the hearing of an appeal, the commissioners are satisfied with the assessment made by the additional commissioners, or if, after the delivery of a schedule, they are satisfied therewith, and have received no information as to its insufficiency,

they shall direct the assessment to be confirmed or to be altered in accordance with any such schedule, as the case may require.

143.—(1) Whenever the general commissioners are dissatisfied with an assessment delivered to them by the additional commissioners or with a schedule, or if they require further information relating thereto, they may, at any time and from time to time, by precept, put any questions in writing concerning the assessment or schedule, or any matter which is contained or ought to be contained therein, or concerning any deductions made in arriving at the profits or gains, and the particulars thereof, and may require true and particular answers in writing, signed by the person to be charged, to be given within seven days after the service of the precept.

(2) (a) The person to be charged shall, within the time limited, either answer any such questions in writing signed by him, or shall tender himself to be examined orally before the commissioners, and may object to, and refuse to answer, any question, but the substance of any answer or answers given by him orally shall be taken down in writing in his presence, and be read over to him, and after he has had liberty to amend any such answer or answers he may be required to verify the same on oath to be administered to him by any one of the commissioners, and every such oath shall be subscribed by the person by whom it is made.

(b) Where any clerk, agent or servant of the person to be charged tenders himself, on behalf of such person, to be examined orally before the commissioners, the same provisions shall apply to his examination as in the case of the person to be charged who tenders himself to be examined orally.

144.—(1) The general commissioners may summon any person whom they think able to give evidence respecting an assessment made or to be made on another person, to appear before them to be examined, and may examine such person on oath (except the clerk, agent, servant or other person confidentially employed in the affairs of a person to be charged who shall respectively be examined in the same manner, and subject to the same restrictions as in the case of a person to be charged who tenders himself to be examined orally).

(2) The oath shall be that the evidence to be given, touching the matter in question by the person sworn, shall be the truth, the whole truth, and nothing but the truth, and the said oath shall be subscribed by the person by whom it is made.

(3) A person who after being duly summoned—

(a) neglects or refuses to appear before the commissioners at the time and place appointed for that purpose; or

(b) appears, but refuses to be sworn or to subscribe the oath; or

(c) refuses to answer any lawful question touching the matters under consideration,

shall forfeit a sum not exceeding twenty pounds:

Provided that the penalty imposed in respect of any offence under paragraph (b) or (c) hereof shall not apply to any clerk, agent, servant or other person as aforesaid.

145. If—

(a) a person has neglected or refused to deliver a schedule in accordance with a precept of the commissioners; or

(b) any clerk, agent, or servant of, or any person confidentially employed by, a person to be charged, having been summoned, has neglected or refused to appear before the commissioners to be examined; or

(c) the person himself, or his clerk, agent, or servant or other person as aforesaid, has declined to answer any question put to him by the commissioners; or

(d) an objection has been made to a schedule, and the objection has not been appealed against; or

(e) the commissioners decide to allow any objection made by the surveyor;

the commissioners shall ascertain and settle, according to the best of their judgment, the sum in which the person chargeable ought to be charged, and shall make an assessment and charge accordingly.

146.—(1) If the general commissioners—

(a) have made a charge to tax under Schedule D in respect of a sum in excess of the amount contained in either the statement or the schedule of a person to be charged; or

(b) discover, from the information of the surveyor, or otherwise, that a charge to tax in respect of a sum in excess of either such amount ought to be made, and an assessment is made, at any time within the year of assessment or within three years after the expiration thereof,

they may, unless the person to be charged proves to their satisfaction that the omission by him did not proceed from any fraud, covin, art or contrivance or any gross or wilful neglect, charge that person, in respect of such excess, in a sum not exceeding treble the amount of the tax on the amount of the excess.

(2) If the person to be charged has neglected or refused to deliver a

statement or schedule, the said commissioners may charge him in a sum not exceeding treble the amount of the tax with which, in their judgment, he ought to be charged. Such sum shall be added to the assessment and applied in the same manner as other increased charges are applied.

147.—(1) Where proceedings in order to an assessment under Schedule D are taken before the special commissioners, the person assessed, or the surveyor, may appeal against the assessment signed and allowed by those commissioners, in like manner, and under the like provisions, as in the case of appeals against assessments made by the additional commissioners.

(2) Any such appeal shall be determined by the special commissioners, and if either the person assessed, or the surveyor, thereupon expresses dissatisfaction with their determination as being erroneous in any particular, the special commissioners shall, if required to do so, state and sign a special case, setting out the questions which arose on the appeal, and their determination thereon, and transmit it to the Commissioners of Inland Revenue for their opinion. The Commissioners of Inland Revenue shall subscribe their opinion on the case transmitted to them, and their decision shall be final and conclusive, subject to any relevant provisions of this Act relating to the statement of a case for the opinion of the High Court, and the assessment made shall be altered or confirmed accordingly.

148.—(1) An appeal against—

(a) an assessment under Schedule D, or an objection by a surveyor to such an assessment, or a surcharge under that Schedule;

(b) an assessment in respect of any concern described in Rules 1 and 2 of No. III. of Schedule A,

may be made to the special commissioners, instead of to the general commissioners, on due notice in writing being given to the surveyor, within the time limited for notices of appeal to the general commissioners in similar cases.

(2) Every such appeal shall be heard and determined by the special commissioners, and their determination shall be final and conclusive, subject to the provisions of this Act relating to the statement of a case for the opinion of the High Court.

(3) Provided that no claimant for the exemption granted by this Act, in a case where the total income does not exceed one hundred and thirty pounds a year, shall be allowed to appeal to the special commissioners, but every such claim shall be heard and determined by the general commissioners.

149.—(1) (a) Immediately after the determination by the general commissioners, or by the special commissioners, of an appeal under this Act, the appellant or the surveyor, if dissatisfied with the determination, as being erroneous in point of law, may declare his dissatisfaction to the commissioners who heard the appeal.

(b) Having declared his dissatisfaction, he may, within twenty-one days

after the determination, by notice in writing addressed to their clerk, require the commissioners to state and sign a case for the opinion of the High Court thereon.

(c) The party requiring the case shall pay to the clerk to the commissioners a fee of twenty shillings for and in respect of the same, before he is entitled to have the case stated.

(d) The case shall set forth the facts and the determination of the commissioners, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within seven days after receiving the same.

(e) At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

(2) (a) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm, or amend the determination in respect of which the case has been stated, or shall remit the matter to the commissioners with the opinion of the Court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit.

(b) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(c) Subject to Rules of Court, the authority and jurisdiction of the High Court may be exercised by a judge of the High Court sitting in chambers, and either in vacation or in term time.

(3) An appeal shall lie from the decision of the High Court or of any judge thereof to the Court of Appeal and thence to the House of Lords, and in Scotland, from the decision of the Court of Session, as the Court of Exchequer in Scotland, to the House of Lords.

(4) Notwithstanding that a case has been required to be stated or is pending before the High Court, tax shall be paid in accordance with the assessment of the commissioners who have been required to state the case:

Provided that, if the amount of the assessment is altered by the order or judgment of the High Court, then—

(a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the High Court may allow; or

(b) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except so far as any penalty is incurred on account of arrears), and shall be paid and recovered accordingly.

150. (*Books of assessment.*)

151.—(1) A person who, either on his own account, or on behalf of another person, has been assessed to tax, and is by any error or mistake

again assessed for the same year for the same cause and on the same account, may apply to the general commissioners, acting for the division comprising the parish in which the erroneous assessment was made, for relief, and the said commissioners on proof to their satisfaction of the double assessment shall cause the said assessment, or so much thereof as constitutes a double assessment, to be vacated.

(2) If it appears, to the satisfaction of the Commissioners of Inland Revenue, that a person has been assessed more than once for the same cause and for the same year, they shall direct the whole, or such part of any such assessment as appears to be an overcharge, to be vacated, and thereupon the same shall be vacated accordingly.

(3) If it is proved, to the satisfaction of the Commissioners of Inland Revenue, that any such double assessment as aforesaid has been made, and that payment has been made on both assessments, they shall order the amount of the overpayment to be repaid to the applicant.

152. (*Charge duplicates.*)

Part VIII.—Collection.

153.—(1) As soon as any assessments have been signed and allowed by the general commissioners, and the time for hearing appeals against the same has expired, the clerk to the commissioners shall duly prepare, on the prescribed forms, two duplicates thereof, and the commissioners shall forthwith sign and seal them.

(2) The assessments shall be kept by the clerk for the use of the commissioners, and the commissioners shall deliver one of the two duplicates to the surveyor for the district, and the other to the collector for the parish for which the assessments were made, together with a warrant, in the prescribed form, for collecting and levying the tax charged.

(3) Where a collector has been required to give security, the duplicates and warrants shall not be delivered to him until he has given that security.

154.—(1) An extract from any assessment made by the special commissioners, certified under the hand of their clerk, in such form as the Commissioners of Inland Revenue may prescribe, shall be sufficient authority to the proper officer to whom that extract is transmitted to receive, bring to account, and give discharges for the tax included in the extract and paid to him.

(2) If payment is not made to the proper officer, the special commissioners shall make a duplicate of the assessment and deliver it, together with their warrant for levying the amount of tax due, to the collector for the parish in which the person charged resides, who shall levy the same in accordance with the warrant.

155. (*Collection of tax in public departments.*)

156.—(1) Where a person, charged under Schedule D, has declared his intention to pay the tax under a number or letter to the proper officer

within the time limited for payment, and the commissioners are satisfied with his declaration, they shall deliver to him a certificate specifying the amount of tax to be paid.

(2) The certificate shall be numbered or lettered in correspondence with the entry in the book of assessments to which it relates, and shall not name or describe the person charged.

(3) The general commissioners shall deliver to the proper officer duplicates of the assessments made by them, containing the sums charged on persons to whom certificates, as aforesaid, have been delivered, without naming any such persons, together with warrants for the receipt of the tax when it becomes payable.

(4) The tax payable on such assessments shall be paid to the proper officer, before the time limited for payment, and the production of the certificate shall be sufficient authority to the said officer to receive the amount therein specified.

(5) On payment of any such amount the said officer shall give a certificate of payment, identified by the number or letter marked on the certificate, but not naming or describing the person on whose behalf payment is made.

(6) The certificate given on any such payment of tax shall be delivered by the person charged to the general commissioners or their clerk, at their office, before the time limited for payment, and a receipt shall be given for the same. The receipt shall be a sufficient discharge for the money certified to have been paid.

(7) Whenever the tax in respect of any such assessment becomes due and in arrear, the general commissioners shall cause that assessment to be added to the duplicates in the hands of one of the respective collectors to whom has been intrusted the collection of tax charged on persons by name, and the tax on that assessment shall be recovered and levied in the same manner, and under the like provisions and powers, as the tax charged on persons by name.

157.—(1) Income tax contained in an assessment for any year shall, except as otherwise provided in this section, be payable on or before the first day of January in that year, but tax included in an assessment for any year, which is signed and allowed on or after the first day of January, shall be deemed to be due and payable on the day next after the day on which the assessment is signed and allowed.

(2)—(a) Tax for any year shall, in cases to which this subsection applies, instead of being payable on or before the first day of January in that year, or on such other date as is specified in subsection (1) of this section, be payable in two equal instalments, the first on or before the first day of January in that year, or on such other day as aforesaid, and the second on or before the following first day of July;

But where the assessment is not signed and allowed until after the said following first day of July, this subsection shall not have effect, and the tax shall be due and payable as provided in subsection (1) of this section;

(b) This subsection applies in cases of tax charged under No. I. or No. II. of Schedule A and tax charged on any individual or firm under Schedule B in respect of lands occupied for husbandry only, and tax charged on any individual or firm under Schedule D, or the rules thereof, in respect of the profits or gains of any trade or of any profession or vocation, and tax charged on any individual in respect of any office or employment, whether under Schedule D or Schedule E, except individuals whose tax is deducted at definite intervals of less than half a year, and weekly wage-earners whose tax is, under this Act, assessed and charged quarterly.

(c) The provisions of this Act as to the recovery of tax shall apply to each instalment of the tax, in the same manner as they apply to the whole amount of the tax.

(3) Railway companies in England and Ireland shall pay tax under Schedule D by four quarterly payments, that is to say, on or before the twentieth days of June, September, December, and March respectively, in each year.

(4) The tax payable by weekly wage-earners, who under the provisions of this Act are to be assessed and charged quarterly, shall be payable as prescribed by any regulations made by the Commissioners of Inland Revenue.

158.—(1) Every collector shall, when the tax becomes due and payable, make demand of the respective sums contained in the duplicates, and given to him in charge to collect, from the persons charged therewith, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require.

(2) A collector of tax under Schedules A and B shall, in the demand note delivered before payment thereof, distinctly describe the property to which the assessment relates, and specify the amount of the assessment and the rate at which the tax is charged thereon.

(3) On payment of the tax the collector shall, without charge, give a receipt under his hand, on the prescribed form, and if he has failed to give the particulars required by subsection (2) of this section in the demand note, he shall give them in the receipt.

159. Any person, on production to the proper officer of his notice or certificate of assessment, may pay to him in advance any sum therein charged upon him under Schedule D, and such officer, on request made at the time of payment, may make an allowance from the amount payable, calculated at the rate of two pounds ten shillings per cent. per annum on that amount for the period commencing on the day when the payment was made and ending on the day limited for payment, and such officer shall give a certificate of payment, specifying the amount discharged and the amount of the allowance, by reference to the name, or the number or letter, appearing on the notice or certificate of assessment respectively.

160. If the Commissioners of Inland Revenue make arrangements for the collection of tax by means of stamps in any case, they may prepare

and issue any stamps required for the purpose, and the provisions (including penal provisions) of the Stamp Duties Management Act, 1891, as amended by any subsequent Act, and section sixty-five of the Post Office Act, 1908, shall apply to any such stamps.

161.—(1) If a person chargeable to tax is an infant, or dies—

(a) the parent, guardian or tutor of the infant shall be liable for the tax in default of payment by the infant; and

(b) the executor or administrator of the person deceased shall be liable for the tax charged on such deceased person,

and on neglect or refusal of payment any such person so liable as aforesaid may be proceeded against in like manner as any other defaulter.

(2) A parent, guardian or tutor who makes such payment shall be allowed all sums so paid in his accounts, and an executor or administrator may deduct all such payments out of the assets and effects of the person deceased.

(3) If the owner of any lands, tenements, hereditaments, or heritages, occupied by him at the time an assessment for any year under Schedule A was made, dies before payment of the tax, the heirs, executors, administrators, or assigns, or other persons who become entitled on his death, to the rents and profits thereof, shall be liable to pay all arrears of tax due at the time of the death, or, if no arrears are due, the tax payable for the period up to the time of the death, together with, in either case, the tax payable for the remainder of that year, according to their respective interests, without any new assessment.

162.—(1) If a person neglects or refuses to pay the sum charged, upon demand made by the collector in accordance with the assessments and warrants delivered to him, the collector shall, for non-payment thereof, distrain upon the lands, tenements and premises in respect of which the tax is charged, or distrain the person charged by his goods and chattels, and all such other goods and chattels as the collector is hereby authorised to distrain, without any further authority for that purpose than the warrant delivered to him on his appointment.

(2) For the purpose of levying any such distress, a collector may, after obtaining a warrant for that purpose, under the hands and seals of the general commissioners, break open, in the daytime, any house or premises, calling to his assistance any constable or other peace officer. Every such constable or officer shall, when so required, aid and assist the collector in the execution of the warrant and in levying the distress in the house or premises.

(3) A levy or warrant to break open shall be executed by, or under the direction of, and in the presence of, the collector.

(4) A distress levied by the collector shall be kept for five days, at the costs and charges of the person neglecting or refusing to pay.

(5) If the person aforesaid does not pay the sum due, together with the costs and charges, within the said five days, the distress shall be appraised by two or more inhabitants of the parish in which the distress

is taken, or by other sufficient persons, and shall be sold by public auction by the collector or his deputy for payment of the sum due and all costs and charges. The costs and charges of taking, keeping, and selling the distress shall be retained by the collector or his deputy, and any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the owner of the goods distrained.

(6) If a collector advances and pays over to the proper officer any sum of money on account of tax charged on some other person, whether at the request of that person or not, he may, in default of repayment to him of that sum at any time within six months after the payment, levy the tax in like manner as if that sum of money had not been advanced and paid.

163.—(1) No goods or chattels whatever, belonging to any person at the time any tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made, or to whom the assignment was made, pays or causes to be paid to the collector, before the sale or removal of the goods or chattels, all arrears of tax which are due at the time of seizure, or which are payable for the year in which the seizure is made:

Provided that where tax is claimed for more than one year, the person at whose instance the seizure has been made, may, on paying to the collector the tax which is due for one whole year, proceed in his seizure in like manner as if no tax had been claimed.

(2) In case of neglect or refusal to pay the tax so claimed or the tax for one whole year, as the case may be, the collector shall distrain the goods and chattels, notwithstanding the seizure or assignment, and shall proceed to the sale thereof, as prescribed by this Act, for the purpose of obtaining payment of the whole of the tax charged and claimed, and the reasonable costs and charges attending such distress and sale, and every collector so doing shall be indemnified by virtue of this Act.

164. If lands charged under Schedule A are unoccupied, and no distress can be found thereon at the time the tax is payable, the collector for the time being of the parish in which the lands are situate may at any future time when there is any distress to be found on the lands, enter, seize, and sell, under the same powers as if a distraint had been made on the lands at the time the tax became due and as if the occupier had been in occupation at that time.

165.—(1) If a person neglects or refuses to pay tax charged upon him by virtue of this Act within ten clear days after demand as aforesaid, and no sufficient distress can be found whereby the same may be levied, the general commissioners may, by warrant under their hands and seals, commit him to prison, there to be kept without bail until payment be made of that sum or security given to their satisfaction for payment thereof, together with such further sum, as the commissioners shall

adjudge to be reasonable, for the costs and expenses of apprehending and conveying him to prison; and every such person shall be detained and kept in prison according to the tenor and effect of the warrant.

(2) By direction of the Treasury or of the Commissioners of Inland Revenue, the general commissioners shall issue their warrant to the governor of the prison in which any defaulter is detained under their warrant, directing the liberation of the defaulter, and, on receipt thereof, the governor shall forthwith release and discharge him out of custody, if he is under detention for no other cause than as set forth in the warrant of commitment.

166. In Scotland, the following provisions shall have effect:—

(1) Upon certificate made to them by the collector for the division, district, or county, that any tax is due and not paid, the general commissioners, or sheriff or sheriff substitute for the county, shall issue a warrant for the said collector recovering the said tax by poinding the goods and effects of any person entered in the certificate as being a defaulter, and any person who has made default in paying any sum which may be levied on him in respect of tax may be entered in the certificate as a defaulter, notwithstanding that he was not named in the assessment to tax:

(2) The warrant shall be executed by the sheriff's officers of the county:

(3) The goods and effects so poinded shall be detained and kept on the ground, or at the house where the same were poinded, or in such other place of which the owner shall have notice, near to the said ground or house, as the officer so poinding the same shall think proper, for the space of five days, during which time the said goods and effects shall remain in the custody of the said officer, and liable to the payment of the whole tax in arrear and to the costs to be paid to the officer who poinded the same as hereinafter directed, unless the owner from whom the same were poinded shall redeem the same, within the said space of five days, by payment to the officer of the said tax in arrear and costs, to be settled in the same manner as if the said goods and effects had been sold as hereinafter directed:

(4) The goods and effects so poinded shall, after the expiration of the said five days, be valued and appraised by any two persons to be appointed by the officer (which two persons shall be obliged to value the same, under the penalty of forty shillings sterling for each neglect or refusal), and shall be sold and disposed of, at a sum not less than the value, by the officer who does poind the same:

(5) The value shall be applied, in the first place to the satisfaction and payment of the tax owing by the person whose goods are so poinded, and, in the second place, to the payment for the

trouble of the officer so poinding, at the rate of two shillings per pound of the tax for which the goods shall be so poinded unless the owner from whom the same were poinded shall redeem the same by payment of the appraised value, within the space of five days after the valuation, to the officer who poinded the same:

(6) In case any surplus remains of the price or value, after payment of the said tax, and after payment of what is allowed to be retained by the officer in manner herein directed, such surplus shall be returned to the owner from whom the goods were poinded:

(7) In case no purchaser appears at the said sale, then the said goods and effects, so poinded, shall be consigned and lodged in the hands of the sheriff of the county, or his substitute, and if not redeemed by the owner within the space of five days after the consignment in the hands of the said sheriff or sheriff substitute, the same shall be rouped, sold, and disposed of, by order of the sheriff, in such manner, and at such time and place, as he shall appoint, he always being liable to the payment of the tax to the said collector, and to payment to the officer who shall have poinded the same, for his trouble and expense, as before stated, and to the fees due to the officer, and being, in the third place, entitled to one shilling per pound of the value of the goods so disposed of, for his own pains and trouble, after preference and allowance of the said tax, and of what is appointed to be paid to the officer for his trouble:

(8) There shall also be allowed, to the officer so poinding, the expense of preserving the said goods and effects, and of maintaining the cattle, if there should happen to be any among the goods and effects so poinded, from the time of poinding the same, during the period allowed to the owner to redeem them, and also the expense of the sale; and in like manner the expense shall be allowed to the sheriff or sheriff substitute, for preserving and maintaining the goods or cattle poinded, during the period that the owner is allowed to redeem, after consignment in his hands, and until the sale thereof, and also the expense of the sale; and where no goods or effects, sufficient for payment of the said tax, can be found to be so poinded, and the person liable neglects or refuses to pay the same, in every such case the commissioners, or the sheriff or sheriff substitute, is hereby authorised, by warrant, to commit such person to prison, there to be kept, without bail, until payment shall be made or security for payment be given:

(9) Every auctioneer, or seller by commission, selling by auction, in Scotland, any goods or effects whatsoever by any mode of

sale at auction, shall, at least three days before he begins any sale by way of auction, deliver or cause to be delivered to the collector within whose district such sale is intended to be, a notice in writing, signed by such auctioneer or seller by auction, specifying therein the particular day when such sale is to begin, and the name and surname of the person whose goods and effects are to be sold, with his place of residence:

(10) If any such auctioneer or seller by auction shall sell any such goods and effects by way of auction, without delivering the notice hereinbefore required to be delivered, every such auctioneer, or person selling by auction, offending therein shall, for such offence, incur a penalty of fifty pounds.

167.—(1) No moveable goods and effects belonging to any person in Scotland, at the time any tax became in arrear or was payable, shall be liable to be taken by virtue of any poinding, sequestration for rent, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects pays the tax so in arrear or payable:

Provided that where the tax is claimed for more than one year the person proceeding to take the said goods and effects may on paying the tax for one whole year proceed as he might have done if no tax had been so claimed.

(2) If the said person neglects or refuses to pay the tax so in arrear or payable, or the tax for one whole year, as the case may be, the tax claimed shall, notwithstanding any proceeding at his instance for the purpose of taking the said moveable goods and effects, be recoverable by poinding and selling the said moveable goods and effects under warrant obtained in conformity with the provisions contained in the last preceding section.

168.—(1) Whenever any person has removed to or resides or happens to be in any parish other than the parish in which a charge to tax has been made upon him, and the said tax or any part thereof is in arrear and unpaid, the general commissioners, or the special commissioners acting as general commissioners, for the division comprising the last-mentioned parish, shall sign and transmit, through the Commissioners of Inland Revenue, a certificate of the amount of the tax in arrear and unpaid to the general commissioners, or the special commissioners acting as general commissioners, for the division comprising the first-mentioned parish, whether that parish is or is not in the same part of the United Kingdom, and the said last-mentioned commissioners shall cause the said amount of tax to be raised and levied by and under their warrant, together with the costs and charges attending the same:

Provided that where the first-mentioned parish is within the jurisdiction of the commissioners by whom the charge was made, those commissioners may, by certificate, authorise and direct the collector for that parish to raise and levy upon the person the tax charged and unpaid.

(2) Where no sufficient distress can be found within the division

comprising the parish to which any such defaulter has removed or in which he resides or happens to be, the commissioners for that division shall, by warrant under their hands and seals, commit the defaulter to prison in the same manner and under the same powers as if the tax had been charged in that parish.

(3) In this section the expression "parish" shall, in Scotland, mean county or burgh, and with respect to the tax contained in any certificate as aforesaid the same shall, in Scotland, be recovered under the provisions of this Act for the recovery of tax in Scotland.

169.—(1) Any tax charged under the provisions of this Act may be sued for and recovered, with full costs of suit, from the person charged therewith in the High Court as a debt due to the Crown, or by any other means whereby any debt of record or otherwise due to the Crown can, or may at any time, be sued for and recovered, as well as by the summary means specially provided by this Act for levying the tax.

(2) Any tax assessed and charged quarterly under the provisions of this Act in respect of weekly wage-earners shall, without prejudice to any other method of recovery under this Act, be also recoverable summarily as a civil debt.

170.—(1) If the tax charged on tithes or teinds is not paid within the time limited, the collector and officer respectively may distrain upon the tithes or teinds or upon any other goods or chattels of the owner of the tithes or teinds wherever found, and may seize, take and sell so much thereof as is sufficient for levying the tax. Every such collector and officer shall have the like powers, for that purpose, as are exerciseable in relation to tax in other cases under this Act.

(2) (a) Where tax is charged on any composition for, or any rent or payment in lieu of, tithes or teinds, the occupier of the lands and premises charged with the composition, rent, or payments, shall be answerable for the tax so charged, and may deduct the same out of the next payment on account thereof.

(b) Where tax is charged on the profits of manors or royalties, markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of the profits thereof shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.

(c) In every such case the collector may distrain upon the persons respectively answerable, and may exercise all the powers in that behalf conferred by this Act.

171. Where, under the provisions of this Act, on an application made for the purpose either by a husband or a wife income tax has been charged on the profits or income of the wife as if she were not married, the power to distrain, in the case of non-payment of any income tax payable by the wife, shall extend to the goods and chattels of the husband, as well as to the goods and chattels of the wife:

Provided that no distraint shall be so made on the goods and chattels

of the husband unless a written demand for payment shall first have been made on the husband, or left for him at his usual place of residence, and he shall have failed to pay the amount of tax payable by his wife within seven days of such demand.

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175.—(1) Every collector shall make out and deliver to the general commissioners, under his hand, on the prescribed form, a schedule of deficiencies, to be verified on oath, containing—

(a) the full name and address of every person within his collection from whom he has been unable to collect or receive the tax; and

(b) the particulars of the sum or sums charged upon, and remaining unpaid by every defaulter, and the particular reason for returning such sum or sums as in default; and

(c) the particulars of all sums which have been discharged from any assessments for causes specially allowed by this Act.

(2) The commissioners, after examining the collector on oath, shall make out—

(i) schedules of discharge containing any such sums discharged as aforesaid;

(ii) schedules of defaulters containing—

(a) the sum due from each defaulter, and the particulars thereof; and

(b) the sums not collected by reason of any neglect of the collector, and for which he may be held liable, and for which the parish ought to be re-assessed.

(3) The commissioners shall cause the respective particulars to be entered by their clerk in the respective schedules, on the prescribed forms, and shall sign and seal the schedules.

(4) The commissioners shall transmit all such schedules to the Commissioners of Inland Revenue, and the schedules shall be deposited at the head office of those Commissioners.

(5) A collector shall not insert in any schedule of deficiencies the name of any person as a defaulter to be returned into the High Court, unless he has made oath (which oath shall be endorsed and certified on the schedule) to the following effect, namely, that to the best of his knowledge and belief—

(a) the sum for which the person is returned in default, is due and wholly unpaid, to the collector or to any other person on his behalf; and

(b) there are not to be found any goods or chattels of any person liable to the payment of the tax in arrear, or any part thereof, whereby the same, or any part thereof, might be levied.

176.—(1) (a) A schedule of arrears may, on the expiration of forty days from the time of its delivery to the surveyor, be certified by the Commissioners of Inland Revenue to the High Court:

Provided that during the said period of forty days—

(i) notice shall be given by the collector to each defaulter, named in the schedule, that his name has been included therein; and

(ii) any such defaulter may pay his arrear to the collector, and any arrear so paid shall be discharged from the schedule.

(b) The collector may use any method, allowed by this Act, for the recovery of any arrear included in any such schedule, before the same is certified or forwarded to the High Court.

(2) A schedule of arrears delivered on oath by a collector and certified to the High Court, or a schedule of defaulters made, or purporting to be made, in pursuance of this Act and certified to the High Court by the Commissioners of Inland Revenue, shall be sufficient evidence of a debt due to the Crown, and sufficient authority to a judge of the High Court to cause process to be issued, against any defaulter named in any such schedule, to levy the sum in arrear and unpaid by him.

(3) The production of a schedule of arrears or a schedule of defaulters made, or purporting to be made, in pursuance of this Act, and purporting to contain the name of a defaulter, shall be sufficient evidence that the sum mentioned in the schedule was duly assessed and charged upon the defaulter, and that the same is in arrear and unpaid, and is due and owing to the Crown.

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PART IX.—SPECIAL PROVISIONS APPLICABLE TO IRELAND.

186. The general provisions of this Act shall, in their application to Ireland, have effect subject to, and so far only as they are applicable consistently with, the special provisions contained in this Part of this Act.

187.—(1) The annual value of all tenements and rateable hereditaments with reference to which tax is to be charged under Schedules A and B shall be ascertained according to the respective surveys and valuations from time to time in force for the purposes of poor rates:

Provided that the annual value of lands for the purposes of Schedule B shall be taken to be—

(a) the judicial rent fixed under the Land Law (Ireland) Acts or any of them; or

(b) the annual interest payable to the Irish Land Commission in lieu of rent under the Land Purchase (Ireland) Acts or any of them; or

(c) the purchase annuity payable under the Land Purchase (Ireland) Acts or any of them,

in any case in which it is shown that the judicial rent, the annual interest in lieu of rent, or the purchase annuity, as the case may be, is less than the annual value according to the survey or valuation aforesaid.

(2) The said tax under Schedule A shall be charged upon the landlord or immediate lessor of a tenement or rateable hereditament, but may, if

it appears to the special commissioners to be necessary or proper, be charged upon the person rated to poor rates in respect of any such property.

(3) Tax under Schedule B shall be charged upon the occupier of a tenement or rateable hereditament.

(4) In the event of an appeal by a person who considers himself aggrieved by any such assessment, if it is proved to the satisfaction of the special commissioners by whom the appeal is heard, or the recorder or county court judge by whom the appeal is re-heard, as the case may be, that the annual value on which the assessment is based exceeds the annual rent at which the property in respect of which the assessment is made is worth to be let from year to year, relief shall be given by reducing the assessment and charging the tax on the amount on which it would have been charged if that rent had been adopted as the basis of the assessment instead of such annual value.

(5) If such annual rent at which the property is worth to be let from year to year exceeds the actual rent payable yearly by the tenant or occupier, the landlord or immediate lessor shall be assessed and charged, under Schedule A, on the amount of such actual rent only, and the tenant or occupier shall be assessed and charged under Schedule A on the difference, subject to any claim for exemption, abatement, or relief to which any of the aforesaid persons may respectively be entitled.

(6) Where a person who receives rent in respect of any hereditament which is exempt from being rated to poor rates, is liable to be rated in respect of that rent to the extent of one-half the poundage of any poor rate, the tax under Schedule A shall be assessed and charged upon him upon the full amount of that rent.

188. Assessments under Schedules A and B—

(a) shall be made by the surveyors or other officers acting in that behalf under the direction of the Commissioners of Inland Revenue;

(b) shall be made for and comprise the respective premises which are situate in an administrative county, county borough, county district, or such other district as the said Commissmissioners shall direct; and

(c) shall be signed by the special commissioners.

189.—(1) Assessments under Schedules D and E shall be made by such surveyors or other officers as the Commissioners of Inland Revenue shall appoint in that behalf.

(2) The special commissioners shall—

(a) sign and allow the assessments;

(b) appoint the times and places for hearing appeals against the assessments; and

(c) cause due notice of every such assessment and the amount thereof, and of the time and place for hearing any appeal

against the same to be given by an officer of inland revenue to each person assessed.

190.—(1) The following persons, that is to say—

(a) the special commissioners acting in relation to the signing or allowing of any assessment, to the hearing and determining of any appeal, and to the making and signing of any duplicate and any warrant for collecting and levying the tax and sums of money charged; and

(b) all surveyors and other officers acting in relation to the making of any assessment, or to the assessing or charging of any person therein or thereby; and

(c) all persons named or appointed by the special commissioners to be respectively collectors of the tax and sums of money in relation to the collecting, levying, distraining for, or otherwise recovering of the same;

shall respectively have, use, and exercise all such and the like powers and authorities as any general commissioners, special commissioners, or additional commissioners, and as any surveyors, assessors, collectors, or other officers respectively have, or may use or exercise, in England in relation to the making or allowing of any assessment under this Act, or to the assessing or charging of any person, or to the hearing or determining of any appeal, or the collecting, levying, distraining for or otherwise recovering of the tax, so far as such powers and authorities, or any of them, are applicable, or may be adapted, to the performance of similar acts, matters, and things in Ireland.

(2) In addition to the aforesaid powers, any power which in England may be exercised by the general commissioners may, in Ireland, be exercised by the special commissioners.

(3) Any power which in England would, in recovery of tax, be exercised by a collector for a parish may, in Ireland, be exercised by any collector within the area for which he is appointed.

191.—(1) For the purpose of assessing tax chargeable under Schedules A and B, the secretary, or person acting as such, to the county council of an administrative county and the town clerk, clerk, or person acting as such, to a county borough or an urban district council shall, when required by the Commissioners of Inland Revenue, transmit to them, at the head office of the said Commissioners in Dublin, true copies of the last poor rates made by the county council, county borough council, or urban district council for their respective rating areas or any part thereof.

(2) The Commissioners of Inland Revenue shall pay to the said persons respectively the expenses of making all such copies, not exceeding the rate of two shillings and sixpence for every one hundred ratings.

(3) If any such person as aforesaid neglects to transmit such copies, after being required to do so by the Commissioners of Inland Revenue, he shall, for every such neglect, forfeit the sum of fifty pounds.

192.—(1) Every person shall, at the request of any surveyor, or other officer acting in the execution of this Act, produce to him any survey or valuation on which the rates for any administrative county, county borough, urban district, or part thereof are assessed or made, or any rate or assessment made under any Act relating to poor rates, which is in his custody or possession, and permit the surveyor or other officer to inspect the same and to take copies thereof, or extracts therefrom, without any payment.

(2) Any such person who, on request as aforesaid, refuses to produce any survey, valuation, rate, or assessment which is in his custody or possession, or to permit the inspection thereof, or the taking of such copies thereof or extracts therefrom as the surveyor or other officer may think fit, shall, for every such refusal, forfeit the sum of fifty pounds.

193.—(1) If in any case it appears to the Commissioners of Inland Revenue that any valuation for the purposes of poor rates which is for the time being in force is not correct (having reference to the principles according to which the same ought by law to have been made) with respect to all or any of the tenements or rateable hereditaments included therein, they may direct the commissioner of valuation to make or cause to be made, for the purposes of income tax, a re-valuation of those tenements or rateable hereditaments in accordance with the principles prescribed by law, and the commissioner of valuation shall, with all convenient speed, make the re-valuation or cause it to be made accordingly, and shall sign and transmit the same to the said Commissioners.

(2) Tax chargeable under Schedules A and B shall, after any such re-valuation, be assessed and charged in accordance therewith.

(3) A person assessed in accordance with any such re-valuation may, if aggrieved thereby, appeal against the assessment on the ground that the re-valuation is incorrect, and the special commissioners by whom any such appeal is heard, or the recorder, or county court judge by whom any such appeal is re-heard, may alter the re-valuation and the assessment, and make such an order with reference thereto, as they or he may think fit.

194. In assessing tax chargeable under Schedule A on the landlord or immediate lessor—

(a) If the amount or annual value, on which the assessment is made, is not less than the annual rent reserved or payable to him for the premises in respect of which the assessment is made, an allowance or abatement shall be made in respect of the amount of poor rates paid or borne by him for the same premises in the preceding year; and

(b) If the amount or annual value on which the assessment is made is less than the said rent, an allowance or abatement shall be made of the sum by which the amount of the poor rate, added to the sum on which the assessment is made, exceeds that rent.

195. All appeals against assessments shall be heard and determined by the special commissioners, and their determination on any such appeal shall be final and conclusive, unless the person assessed requires that his appeal shall be re-heard as hereinafter provided, or unless, under the provisions of this Act, a case is required to be stated for the opinion of the High Court, and, in default of appeal by a person to whom notice of assessment, and of the time and place for hearing appeals, has been given, the assessment made on him shall be final and conclusive.

196.—(1) Any person who is aggrieved by the determination of the special commissioners in any appeal against an assessment made upon him may, on giving notice in writing to the surveyor, within ten days after such determination, require that his appeal shall be re-heard by the recorder or county court judge, as the case may be, having jurisdiction in the place where the assessment was made: and the special commissioners shall transmit to the said recorder or county court judge, as the case may be, any statement or schedule in their possession which was delivered to them for the purposes of the appeal.

(2) The said recorder or county court judge shall, with all convenient speed, re-hear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all matters consequent thereon, as the special commissioners might have and exercise, and his determination thereon shall be final and conclusive.

(3) The recorder or county court judge shall make a declaration in the form of the declaration required to be made by a special commissioner as set out in Part I. of the Fourth Schedule to this Act.

197.—(1) After the expiration of the respective times for the hearing of appeals, the special commissioners shall cause duplicates of all assessments to be delivered, together with warrants under the hands and seals of two special commissioners, to the officers or other persons named by them, in the said warrants, to be collectors.

(2) The warrants shall appoint the officers or other persons named named therein to be collectors of the tax and sums of money assessed and charged in the duplicates, and shall require and empower them to demand, collect, recover and levy the same.

198. Collectors of tax shall receive such reasonable remuneration for their services in the execution of this Act as the Treasury may prescribe.

199.—(1) Tax under Schedules A and B may be collected, recovered and levied by the collector by distress from the person charged, or from the occupier of the property charged, or upon the premises in respect of which the assessment is made, and all goods and chattels, to whomsoever the same may belong, found upon any such premises may be distrained and sold for the recovery of any such tax; or such tax, or any arrears thereof, may be collected, recovered and levied in the same manner as

other tax charged in Ireland under this Act may be collected, recovered and levied.

(2) Provided that tax charged under Schedule A in respect of any tenement or hereditament may be collected, recovered and levied by the collector from the landlord or immediate lessor of the premises charged, whether he be named in the assessment or not.

(3) Where an assessment under Schedule A has been made on the tenant or occupier of premises charged, the landlord or immediate lessor shall only be liable to proceedings under sub-section (2) of this section, in default of payment by the tenant or occupier, and for so much only of the tax charged as is chargeable in respect of the rent payable yearly to him for the premises charged.

200. No administrative county, county borough, county district, or place in Ireland shall be answerable for the amount of the tax charged therein, or for any neglect or default of the collector in demanding or collecting the same, and no re-assessment shall be made for any arrears or loss occasioned by any such neglect or default.

201. Where a person liable to tax under Schedule A is authorised under this Act to retain tax from any annual payment made by him from which he is by law entitled to deduct any sum on account of poor rates, the tax to be retained shall be calculated by reference to the net sum payable by him after the allowance for poor rates.

202. Claims of exemption, abatement, or relief, and all claims for the repayment of tax under this Act, shall be made in such manner and form as the Commissioners of Inland Revenue may prescribe, and shall be made to, and finally determined by, the special commissioners, subject, as regards claims for exemptions, to the like appeal by way of re-hearing as in the case of assessments.

203. In computing the income of any person for the purposes of this Act, the computation, so far as concerns any rent derived from tenements or hereditaments chargeable under Schedule A, shall be made after allowing for the amount of any poor rates chargeable on that rent by way of deduction or otherwise.

204.—(1) If any landlord or immediate lessor of any tenement or hereditament charged to tax under Schedule A has paid the same and proves, to the satisfaction of the special commissioners, that the rent, or any part thereof, due or payable to him in respect of that tenement or hereditament, for the period for which that tax was charged, has been wholly and irrecoverably lost by reason of—

(a) the bankruptcy, insolvency, or absconding of the tenant or occupier by whom such rent was payable; or

(b) the fraudulent assignment or removal of his goods by the said tenant or occupier; or

(c) the tenement or hereditament being left waste and unoccupied,

he shall be entitled to be repaid such proportion of the said tax as he

shall have paid in respect of the rent so lost; and the said commissioners shall issue an order for repayment, in like manner as in other cases of repayment.

(2) Any such claim for repayment shall be made within six months after the expiration of the year of assessment.

205. An action of ejectment for non-payment of rent shall not be defeated on the ground that the person liable to pay the rent is entitled under this Act to a deduction which would reduce the amount due by him below a year's rent.

206. A justice of the peace may administer any oath required or permitted by this Act to be taken before a commissioner or justice by any officer or person in any matter touching the execution of this Act.

Part X.—Miscellaneous.

207. Any person who, on his own behalf or on behalf of another person or body of persons, delivers a statement of the amount of the annual value or profits on which any tax is chargeable, shall, so far as the same are respectively applicable, observe the rules and directions contained in the Fifth Schedule to this Act.

208. The provisions in this Act contained which are applied to the tax under any particular Schedule shall, if also applicable to the tax under any other Schedule and not repugnant to the provisions for ascertaining, charging or levying the tax under such other Schedule, be applied in ascertaining, charging and levying tax under that Schedule, as if the application of those provisions thereto had been expressly and particularly directed.

209.—(1) In arriving at the amount of profits or gains for the purpose of income tax—

(a) no other deductions shall be made than such as are expressly enumerated in this Act;

(b) no deduction shall be made on account of any annual interest, annuity or other annual payment to be paid out of such profits or gains in regard that a proportionate part of the tax is allowed to be deducted on making any such payment.

(2) In arriving at the amount of profits or gains from any property described in this Act, or from any office or employment of profit, no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade or in any profession, employment or vocation.

210. In order to ensure the collection in due time of tax which may be granted for any year commencing on the sixth day of April, all such provisions contained in this Act, or in any other Act relating to tax (including super-tax), as were in force on the preceding day, shall have full force and effect with respect to tax which may be so granted, in the

same manner as if the said tax had been actually granted by Act of Parliament and the said provisions had been applied thereto by the Act.

211.—(1) Where in any year of assessment any half-yearly or quarterly payments have been made on account of any interest, dividends or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately imposed for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule, under Case VI. of Schedule D, and the agents entrusted with the payment of the interest, dividends or other annual profits or gains shall furnish to the Commissioners of Inland Revenue a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by those Commissioners in that behalf.

(2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment, shall be authorised to make any deduction on account of tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made, on the occasion of the next payment of the rent, interest or annuity, or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing tax for the year had been in force.

212. No provision contained in the County Rates Act, 1852, or in the Union Assessment Committee Act, 1862, shall authorise any assessment committee under those Acts to require any assessor, collector or other person employed in the assessment or collection of tax to make or transmit, or to permit any other person to make, copies of or extracts from any assessment, rate or rate book or any document relating to the assessment or collection of tax upon profits of trade in respect of quarries, mines, ironworks, gasworks or other concerns in the nature of trade or manufacture chargeable under Schedule A, nor shall any such person be required to attend before any such committee to produce any such assessment, rate, rate book or document, or to be examined concerning the same.

213. No letters patent granted or to be granted by the Crown to any person, city, borough, or town corporate of any liberty, privilege, or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to

exempt any person, city, borough or town corporate, or any of the inhabitants of the same, from tax, and all non obstantes in any such letters patent or statute made or to be made to the contrary effect shall be void.

214.—(1) Warrants and precepts of the general commissioners shall be executed by the respective persons to whom they are directed in any part of the same county within any division of which those commissioners have jurisdiction.

(2) Constables and other peace officers shall aid in the execution of this Act, and obey and execute such precepts and warrants as are directed to them in that behalf by the respective commissioners under the authority of this Act.

215. (*Provisions as to forms.*)

216.—(1) An assessment, charge, warrant or other proceeding which purports to be made in pursuance of this Act shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

(2) An assessment or a charge made upon an assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

(i) the name or surname of a person liable; or

(ii) the description of any profits or property; or

(iii) the amount of the tax charged;

(b) by reason of any variance between the notice and the certificate of charge or assessment:

Provided that in cases of charge the notice of charge shall be duly served on the person intended to be charged, and the notice and certificate shall respectively contain, in substance and effect, the particulars on which the charge is made; and every such charge shall be heard and determined on its merits by the general commissioners.

217. No receipt, certificate of payment, affidavit, appraisement or valuation given or made in pursuance and for the purposes of this Act, and, in England, no bond or other security given under this Act by a collector or other person in respect of the collection, accounting for, or remitting of tax, shall be liable to any stamp duty.

218. Assessments, duplicates of assessments, minute books, and other public books and papers relating to tax in the custody or possession of any clerk, assessor, or collector, or of the legal representatives of any person who has died or shall die during the holding of any such office, or after his removal from the same, or of his agent or attorney, or of any

other person, shall be the property of the general commissioners acting in their respective divisions for the time being, and shall be placed with them and remain in their custody and possession, or the custody and possession of their respective clerks for the time being, or of such other person as the respective commissioners for the time being may from time to time at their meetings direct.

219.—(1) A person who has in his custody or possession any books or papers relating to tax shall, within one month next after notice in writing from the Commissioners of Inland Revenue requiring him to do so, deliver them to the person named in the notice, and, if he fails to do so, shall, for every such offence, incur a penalty of fifty pounds.

(2) The receipt of the person named in the notice shall be a sufficient discharge to the person delivering the books or papers.

220.—(1) Notices required to be affixed, delivered or served may be issued to the respective assessors by the surveyors of the districts in which the notices are required, for the purpose of being so affixed, delivered or served.

(2) The issue to the assessors of any such notices by a surveyor shall be as effectual as delivery to them by the general commissioners concerned.

(3) Any directions which have been allowed by the respective commissioners with reference to the time and manner of fixing, delivering or otherwise serving the notices, and the persons on whom they are to be served, shall, when given by the surveyor to a collector or assessor, be observed by him.

(4) A notice or form which is to be served on a person may be either delivered to him or left at his usual or last known place of abode.

(5) A notice to a person to be given by a surveyor may be served by registered post.

(6) A notice to be given by the Commissioners of Inland Revenue may, by their order, be signed by one of their secretaries or assistant secretaries, and if purporting to be so signed by their order shall be valid and effectual.

(7) Notices to be given or delivered to, or served on, the general commissioners or the additional commissioners shall be valid and effectual if given or delivered to or served on their clerk.

(8) Provided that—

(a) any notice or other document to be given, served, sent or delivered, under this Act or any Act relating to income tax, may be served by post in such cases as the Commissioners of Inland Revenue direct by regulations to be made by them for the purpose; and

(b) any notice or other document to be given, served, sent or delivered to or on an employed person may be served by post at his place of employment.

221.—(1) No proceedings shall be commenced against any person for the recovery of any fine, penalty or forfeiture under this Act except by order of the Commissioners of Inland Revenue and in the name of an officer, or in England in the name of the Attorney-General for England, in Scotland in the name of the Lord Advocate, and in Ireland in the name of the Attorney-General for Ireland.

(2) Any fine or penalty under this Act may, except as otherwise provided, be sued for and recovered, with full costs of suit, in the High Court, and any such penalty shall be sued for by information.

(3) Proceedings in the High Court for the recovery of any fine or penalty, and proceedings in England, before the general commissioners, and in Scotland either before the general commissioners or before the sheriff for the recovery of any penalty which is not recoverable in the High Court, may be commenced within three years next after the fine or penalty was incurred.

(4) Where a pecuniary penalty not exceeding twenty pounds, or a penalty exceeding twenty pounds which is directed to be added to the assessment, is recoverable in the High Court, that penalty may, in lieu of being so recovered, be recovered in England before the general commissioners, and in Scotland either before the general commissioners or before the sheriff for the county where the offence was committed, by proceedings to be commenced within twelve months next after the penalty was incurred.

(5) The proceedings before any general commissioners or any sheriff shall be by way of information in writing, made to them, and upon a summons to the person accused to appear before them at such time and place as they shall fix, and they shall examine into the matter of fact, and hear and determine the same in a summary way, and they shall give judgment for the penalty, or such part thereof as they shall think proper to mitigate the same to, and shall assess the penalty on the person accused by way of supplementary assessment, and the penalty shall be levied in like manner as tax.

The adjudication on such proceedings shall be final and conclusive, and the proceedings and decree of the said commissioners or sheriff shall not be removable, by any process whatever, into any court of law.

222.—(1) The Commissioners of Inland Revenue may, in their discretion, mitigate any fine or penalty, or stay or compound any proceedings for recovery thereof, and may also, after judgment, further mitigate or entirely remit the fine or penalty, and may order any person imprisoned for any offence to be discharged before the term of his imprisonment has expired. The Treasury may mitigate or remit any such fine or penalty, either before or after judgment.

(2) Moneys arising from fines, penalties and forfeitures, and all costs, charges and expenses payable in respect thereof or in relation thereto respectively, shall be accounted for and paid to the Commissioners of Inland Revenue or as they direct.

223. Where an increased rate of tax is imposed as a penalty, or as part of or in addition to a penalty, the penalty and increased rate of tax may be added to the assessment, and collected and levied in like manner as any tax included in such assessment may be collected and levied.

224. The provisions of this Act shall not affect any criminal proceedings for any felony or misdemeanour.

225.—(1) If any person, by himself or by any person in his employ, obstructs, molests, or hinders—

(a) an officer or any person employed in relation to any duty of income tax in the execution of his duty, or of any of the powers or authorities by law given to the officer or person; or

(b) any person acting in the aid of an officer or any person so employed;

he shall, for every such offence, incur a fine of one hundred pounds.

(2) Without prejudice to any other mode of recovery, the fine imposed under this section may be proceeded for and recovered in the same manner, and, in the case of summary proceedings, with the like power of appeal, as any fine or penalty under any Act relating to the excise.

226. A surveyor who—

(a) wilfully makes a false and vexatious surcharge of tax; or

(b) wilfully delivers, or causes to be delivered, to the general commissioners a false and vexatious certificate of surcharge, or a false and vexatious certificate of objection to any supplementary return in a case of surcharge; or

(c) knowingly or wilfully, through favour, undercharges or omits to charge any person; or

(d) is guilty of any fraudulent, corrupt, or illegal practices in the execution of his office,

shall, for any such offence, incur a penalty of one hundred pounds, and on conviction shall be discharged from his office.

227. If any person, for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of tax, either for himself or for any other person, or in any return made with reference to tax, knowingly makes any false statement or false representation, he shall be liable, on summary conviction, to imprisonment for a term not exceeding six months with hard labour.

228. If in Scotland or Ireland any person, upon any examination on oath, or in any affidavit or deposition authorised by this Act, wilfully and corruptly gives false evidence, or wilfully and corruptly swears any matter or thing which is false or untrue, he shall on conviction be subject and liable to such punishment as persons convicted of perjury are subject and liable to.

229.—(1) A commissioner, sheriff, sheriff depute or sheriff substitute, clerk, surveyor, assessor, or collector who acts, or is employed, in the

execution of this Act, shall not be liable to any penalty in respect of such execution other than is by this Act provided.

(2) Where any civil or criminal proceeding, against any officer or person employed in relation to any duty of income tax, on account of the seizure or detention of any goods, is brought to trial, and a verdict or judgment is given thereupon against the defendant, if the court or judge certifies that there was probable cause for the seizure, the plaintiff shall not be entitled to any damages, besides the goods seized, or the value thereof, nor to any costs, and the defendant shall not be liable to any punishment.

230.—(1) Anything required under this Act to be done by the Treasury may be signified under the hand of a secretary or assistant secretary to the Treasury.

(2) Anything required under this Act to be done by the general commissioners, the additional commissioners, the special commissioners, or any other commissioners may, save as otherwise expressly provided by this Act, be done by any two or more commissioners.

(3) Any general commissioner may administer an oath required or permitted to be taken before the general commissioners under this Act by any officer or person in any matter touching the execution of this Act.

. . . . .

233. In any proceedings under or arising out of this Act before any court or person empowered to take evidence, primâ facie proof of the fact that any person was a commissioner or officer may be given by proving that, at the time when any matter in controversy in any such proceedings arose, that person was reputed to be or had acted as a commissioner or officer.

234. In the event of a sufficient number of general commissioners not attending to sign and allow, in due time, the assessments and duplicates of the tax for any parish, any two general commissioners acting within the same county shall sign and allow any such assessments or duplicates.

235. All matters within the jurisdiction of the High Court of Justice under this Act shall be assigned in England and Ireland to the King's Bench Division of the High Court, and in Scotland to the Court of Session sitting as a Court of Exchequer.

236. All such regulations of the Commissioners of Inland Revenue as relate to—

(a) the assessment, charge, collection and recovery of super-tax;

(b) *allowance or deduction* (*z*) or relief in respect of quarterly assessments on weekly wage-earners;

(c) the assessment and collection of tax in the case of quarterly assessments on weekly wage-earners; or

(d) service by post;

(*z*) Words substituted, Finance Act, 1920, s. 32, and Third Sched.

shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days, or in the case of a regulation relating to super-tax within the next subsequent forty days, on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

237. In this Act, unless the context otherwise requires:—

"Annuity fund" means, where an annuity fund is not kept separately from the life assurance fund of an assurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns to the Board of Trade, under the Assurance Companies Act, 1909;

"Assurance company" means any persons or bodies of persons to which the Assurance Companies Act, 1909, applies;

"Assessor" includes a surveyor acting as assessor when empowered so to act;

"Body of persons" means any body politic, corporate, or collegiate, and any company, fraternity, fellowship and society of persons, whether corporate or not corporate;

"City division" means a division consisting of any city, borough, town, or other place, under the separate jurisdiction of any body of general commissioners;

"County division" means a division other than a city division and consisting of any county, riding or shire, or of any hundred, rape, lathe, wapentake, or other division of a county, riding, or shire, under the separate jurisdiction of any body of general commissioners;

"Foreign life assurance fund" means any fund representing the amount of the liability of an assurance company in respect of its life assurance business with policy-holders and annuitants residing out of the United Kingdom whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the United Kingdom, and, where such a fund is not kept separately from the life assurance fund of the company, means such part of the life assurance fund as represents the liability of the company under such policies and annuity contracts; such liability being estimated in the same manner as it is estimated for the purposes of the periodical returns of the company to the Board of Trade, under the Assurance Companies Act, 1909;

"Gazette" means, as the context requires, "London Gazette," "Edinburgh Gazette" or "Dublin Gazette";

"Incapacitated person" means any infant, married woman, lunatic, idiot, or insane person;

"Land Tax Commissioners" means the commissioners appointed, under authority of Parliament, for executing the Acts relating to land tax;

"Life assurance business" includes the business of granting annuities;

"Parish" means any city, town, ward, township, tithing, parish, place or precinct, or part thereof, for which a separate assessment of income tax has been, or can be, made, or for which an assessor or collector has been, or can be, appointed;

"Surveyor" means a surveyor of taxes and includes an inspector of taxes;

"Trade" includes every trade, manufacture, adventure or concern in the nature of trade;

"Weekly wage-earner" means a person who receives wages which are calculated by reference to the hour, day, week or any period less than a month, at whatever intervals the wages may be paid, or who receives wages, however calculated, which are paid daily, weekly, or at any less intervals than a month;

"Year of assessment" means, with reference to any tax, the year for which such tax was granted by any Act granting duties of income tax.

238. The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Provided that—

(a) Any notice, form, order, rule, regulation or direction prescribed, made, issued or given under any enactment repealed by this Act shall continue in force as if it had been prescribed, made, issued or given under this Act, and may be repealed, revoked, varied or amended accordingly:

(b) Any document referring to any Act or enactment repealed by this Act shall be construed as referring to this Act or to the corresponding enactment of this Act:

(c) Any commissioner, officer or person appointed to act or employed under or by virtue of any enactment repealed by this Act in relation to duties of income tax shall continue and be deemed to have been appointed or employed under or by virtue of this Act:

(d) Where any provision repealed by this Act so far as it relates to income tax, and reproduced in this Act in relation to income tax, authorises or requires any appointment to be made or action to be taken, or imposes any penalty both in relation to income tax and in relation to any other tax or duty as respects which the provision in question is not repealed, then nothing in this Act shall authorise or require

separate appointments or separate action or the imposition of penalties, both under the provision so repealed and under the corresponding provision of this Act, but the two provisions shall have effect as though they continued to be contained in one enactment relating both to income tax and to such other tax or duty as aforesaid:

(c) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

239.—(1) This Act may be cited as the Income Tax Act, 1918

(2) This Act shall come into operation on the sixth day of April nineteen hundred and nineteen:

Provided that the provisions of this Act shall not apply to any duties of income tax granted by Parliament prior to the commencement of this Act, or to any enactment, matter or thing touching any such duties, and in respect of any such duties the Acts applicable thereto which are repealed by this Act shall have the same effect as if this Act had not been passed.

SCHEDULES.

FIRST SCHEDULE.

Schedule A.

Tax under Schedule A. shall be charged in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, for every twenty shillings of the annual value thereof.

Rules applicable to Schedule A.

Nothing in these rules shall affect the valuation of lands, tenements or hereditaments within the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive for the purposes of Income Tax, and the following rules that is to say, the general rule of No. I, Rules 1 and 3 of No. II., Rules 1 to 14 of No. IV., Rules 6 and 7 of No. VII., and Rules 5, 6 and 7 of No. IX. (which Rules are distinguished by an asterisk) and any other rule which relates to the ascertainment of the value of such lands, tenements or hereditaments shall not apply within the administrative county of London, except in the case of hereditaments which are not included in any such valuation list or which are chargeable according to profits and not according to gross value, and except as respects the mode of charging the occupiers of land subject to a tithe rentcharge in respect of such tithe rentcharge.

No. I.—General Rule for estimating the annual value of Lands, Tenements, Hereditaments or Heritages.

*In the case of all lands, tenements, hereditaments or heritages capable of actual occupation, of whatever nature, and for whatever purpose occupied or enjoyed, and of whatever value (except the properties mentioned in No. II. and No. III. of this Schedule), the annual value shall be understood to be:—

(1) The amount of the rent by the year at which they are let, if they are let at rackrent and the amount of that rent has been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; or

(2) If they are not let at a rackrent so fixed, then the rackrent at which they are worth to be let by the year.

No. II.—Rules for estimating the annual value of certain Lands, Tenements, Hereditaments or Heritages which are not to be charged according to the preceding General Rule, and for determining the person chargeable.

*1. In the case of tithes, if taken in kind, the annual value shall be understood to be the average amount for one year of the profits of the three preceding years.

2. In the case of dues and money payments in right of the church or by endowment, or in lieu of tithes (not being tithes arising from lands), and all teinds arising in Scotland, the annual value shall be understood to be the average amount for one year of the profits of the three preceding years.

*3. In the case of tithes arising from lands, if compounded for, and all rents and other money payments in lieu of tithes arising from lands (except rentcharges confirmed under the Tithe Act, 1836), the annual value shall be understood to be the amount of the profits from such composition, rent or payment for the year preceding.

4. In each of the cases mentioned in rules 1, 2 and 3 tax shall be assessed and charged on the person entitled to the tithes or payments, or his lessee or tenant, agent or factor, except when the tax is charged in accordance with rule 6 of No. VII. of this Schedule.

5. In the case of manors and other royalties, including all dues and other services or other casual profits (not being rents or other annual payments reserved or charged), the annual value shall be understood to be the average amount for one year of the profits of the seven preceding years. Tax shall be assessed and charged on the lord of the manor or royalty, or the person renting the same.

6. In the case of fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by the custom thereof), the annual value shall be understood to be the amount of the profits received within the preceding year.

Tax shall be assessed and charged on the receiver of the fines: Provided that if the person chargeable satisfies the general commissioners for the division that any part of the fines has been applied as productive capital, on which a profit has arisen or will arise which is otherwise chargeable for the year for which the assessment is made, the commissioners may discharge the amount so applied from the profits liable to assessment and charge under this rule.

7. In the case of all other profits not before enumerated (other than profits liable to deduction in pursuance of rules 1 and 4 of No. VIII. of this Schedule) arising from lands, tenements, hereditaments or heritages not being in the actual possession or occupation of the person to be charged, the annual value shall be understood to be the average amount for one year of the profits of the number of years which, on the statement of the person to be charged, appears to the commissioners to be fair and equitable. Tax shall be assessed and charged on the receivers of such profits or on the persons entitled thereto.

8. If, in estimating the value of any property enumerated in the above rules, it appears that the statement required cannot be made out because the possession or interest of the person to be charged commenced within the period upon the basis of which the profits are to be computed, the profits of one year shall be estimated in proportion to the profits received within the time which has elapsed since the commencement of that possession or interest.

No. III.—Rules for estimating the annual value of certain other Lands, Tenements, Hereditaments, or Heritages which are not to be charged according to the preceding General Rule.

1. In the case of quarries of stone, slate, limestone, or chalk, the annual value shall be understood to be the profits of the preceding year.

2. In the case of mines of coal, tin, lead, copper, mundic, iron, and other mines, the annual value shall be understood to be the average amount for one year of the profits of the five preceding years:

Provided that—

(a) If any such mine has, from some unavoidable cause, so decreased and is so decreasing in annual value that an average of five years will not give a fair estimate thereof, the general commissioners of the division in which the mine is situate may, on proof thereof, compute the annual value on the actual amount of profits in the last preceding year subject to such abatement on account of diminution of duty within the current year as is in this Act provided in other cases; and

(b) If any such mine has, from some unavoidable cause, wholly failed, the commissioners may, on due proof thereof, discharge the assessment.

3. In the case of ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, rail-

ways and other ways, bridges, ferries, and other concerns of the like nature having profits from or arising out of any lands, tenements, hereditaments or heritages, the annual value shall be understood to be the profits of the preceding year.

4. Tax under the above rules shall be assessed and charged on the person or body of persons carrying on the concern, or on the agents or other officers who have the direction or management of the concern or receive the profits thereof.

5. Tax shall be assessed and charged on the value of the produce of the concern, before any distribution to any person entitled to any share thereof, or to the owner of the soil or property, or to any creditor or other person whatever who has a claim on the profits, and every such person shall allow, out of the produce or value, a proportionate deduction of the tax charged.

6. The said assessment and charge shall be exclusive of any lands used or occupied in connection with the concern which have been separately assessed and charged under this Act (*a*).

7.—(1) The computation in respect of any such mine carried on by a company of adventurers shall be made and stated jointly in one sum, but any adventurer may be assessed and charged separately if he makes a declaration of his proportion or share in the concern for that purpose.

(2) An adventurer so separately assessed and charged may set off against his profits from one or more of such concerns the amount of his loss sustained in any other such concern as certified by the commissioners for the division where the loss was sustained.

(3) In any such case one assessment and charge only shall be made on the balance of profit and loss, and shall be made in the parish where the adventurer is chargeable to the greatest amount.

8. The properties described in rules 1, 2 and 3 shall be assessed and charged in the manner herein mentioned according to the rules applicable to Schedule D so far as the same are consistent with the rules of this Number.

9. If in estimating the value of any property enumerated in rules 1, 2 and 3 it appears that the statement required cannot be made out because the possession or interest of the person to be assessed and charged commenced within the period upon the basis of which the profits are to be computed, the profits of one year shall be estimated in proportion to the profits received within the time which has elapsed since the commencement of that possession or interest.

No. IV.—Rules for estimating Annual Value.

*1. Where—

(a) a landlord is subject to an agreement to pay or satisfy out of the rent reserved on any lands or tenements, any public local rates, taxes, or assessments, which by law are charged upon the occupier, or any composition for tithes; or

(*a*) See Finance Act, 1919, s. 18 (2).

(b) any person entitled to a rent or other annual payment in lieu of tithes (other than a tithe rentcharge confirmed under the Tithe Act, 1836), or to any composition for tithes, pays or satisfies out of the amount thereof any such public local rates, taxes or assessments charged upon the same;

the annual value shall be estimated exclusive of any such public local charges, or composition for tithes, bonâ fide paid by the landlord or other person aforesaid, respectively, in and for the year preceding the year of assessment.

*2. Where the owner is also occupier of the lands or tenements, and has paid any such public local charges or composition for tithes in respect thereof, the annual value shall be estimated in like manner.

*3. If the assessor is satisfied with the amount contained in any account or statement of the annual value of properties to be assessed under this Schedule delivered under this Act, he shall make an assessment on that amount, and if he is not satisfied, or if no such account or statement has been delivered, he shall estimate to the best of his judgment the annual value of the property and make an assessment thereon.

*4. Where the annual value is to be ascertained according to the general rule of No. I. of this Schedule, and that value cannot be otherwise ascertained, and the last poor rate in the parish was made throughout on the annual value as the same would be estimated under the said general rule or on a proportionate part thereof, the assessor may make his assessment by reference to the annual value for the purposes of the poor rate, but in all cases on the full amount of the annual value instead of on a proportionate part thereof.

*5. Where any dwelling-house or tenement, together with the offices, gardens, and lands occupied therewith, or any lands separately occupied, is of an annual value under ten pounds, the assessor may estimate the annual value to the best of his judgment and make an assessment thereon without requiring a statement of the annual value to be delivered, unless the surveyor objects to his estimate and requires a notice for that purpose to be served.

*6. An assessor who, not having required such statement, neglects to estimate the true annual value of any such property and to assess the same according to this Act, shall forfeit a sum not exceeding ten pounds.

*7. If any tenant at rackrent produces to the assessor the lease or agreement in writing under which he immediately holds any premises chargeable under the general rule of No. I. of this Schedule, and it appears therefrom that the premises have been let within the seven preceding years, and that no consideration in money other than the rent reserved is contained in the lease or agreement, the assessor may make his assessment according to that rent.

*8. The tenant shall produce his lease or agreement to the assessor on request by him.

*9. Any such assessment shall not be binding if it appears to the commissioners--

(a) that the lease or agreement does not express the full consideration

in money or value for the demise or the rent bonâ fide paid for the same; or

(b) that the rent reserved is less than the rackrent on account of repairs or improvements effected, or to be effected, by the tenant or his assigns; or

(c) that the lease or agreement was in any other respect made with intent to conceal the annual value of the premises, or to diminish the estimate to be made thereon, or has been assigned to the tenant or any former tenant for any consideration in money or value paid or agreed to be paid.

*10. In making any such assessment regard shall be had to—

(a) any increase of the amount of the rent reserved by reason of any agreement by the landlord to discharge the tenant's rates, taxes, assessments, or duties hereinbefore mentioned;

(b) any decrease in the amount of the rent by reason of any agreement by the tenant to discharge those of the landlord;

(c) any decrease in the amount of the rent by reason of any expenses incurred or to be incurred by the tenant or any assigns, whether mentioned or not in the lease or agreement; and

(d) any deductions to be made on account of any public rate or assessment hereinbefore described.

*11. In the case of a demise for years of land made in consideration of a rent reserved and of improvements to be made at the cost of the tenant, if it is proved to the satisfaction of the general commissioners that the rent reserved was, in view of the improved value expected to be realised at the cost of the tenant, based upon an estimate of the mean annual value of the land throughout the term, and that the rent, so computed, is fixed and payable at the same amount in each year so that in consequence thereof the rent payable exceeds the annual value at the commencement of the term, the annual value for each year of assessment during the term of the demise shall be taken to be the amount of the rent reserved without variation, subject to the deductions allowed by this Act.

*12. A tenant being—

(a) a tenant at rackrent under a parol demise from year to year within the period defined in the general rule of No. I. of this Schedule: and

(b) a tenant who has neither the custody, nor the power to call for the production, of the lease or agreement under which he holds premises demised within the said period and who proves to the commissioners his inability to produce the same,

shall deliver to the assessor an account in writing, signed by him, stating the amount of the annual rent reserved on any such demise, and thereupon the same rules shall apply as in the case of a tenant who produces to the assessor his lease or agreement.

*13. Lands held for a longer period than seven years, by a tenant at will or under a demise from year to year, shall be estimated and assessed at their annual value, unless the tenant proves to the satisfaction of the

general commissioners that they are held under a demise which was commenced by an agreement made, and a rent fixed, within the period of seven years, on the determination of the former demise of those lands, by due notice within that period.

*14. A person who wilfully—

(a) delivers any such account as aforesaid, which is false; or

(b) refuses, neglects, or omits to produce any lease or agreement with intent to conceal the annual value of the premises therein comprised, or to diminish the estimate to be made thereon,

shall forfeit the sum of twenty pounds, and may be charged in treble the tax chargeable, to be computed on the annual value of the premises and included in the assessment.

15. In Scotland—

(a) Every tenant of lands, tenements, or heritages shall, within ten days after service by the assessor of a notice requiring him to do so, produce to the assessor the tack, lease, or other agreement or articles in writing under which he holds:

(b) If any such documents of title are not within the custody, possession, or power of the tenant, or if there are no such documents, the tenant shall deliver to the assessor within the time limited as aforesaid, a written note stating the actual rent annually reserved, and any other valuable consideration given to the landlord for the tenancy:

(c) A tenant who wilfully neglects to comply with any such notice shall be liable to a penalty of treble the tax chargeable on such lands, tenements, or heritages:

(d) On the production of any such documents of title, the assessor may make his assessment according to the rent therein reserved, or if they are not produced, upon the rent reserved as disclosed in the written note, if he is satisfied that there was no other valuable consideration:

(e) If no written note is delivered, or if the assessor is not satisfied therewith, the assessor shall make an assessment in accordance with the provisions of this Act:

(f) If a farm, occupied by any such tenant, is distant more than ten miles from the dwelling-house of the assessor, the tenant may leave his lease or written note with the nearest justice of the peace, or with the minister of the parish in which the farm is situate, and the justice or minister, as the case may be, shall show the lease or note of the rent to the assessor when required.

No. V.—Rules in respect of Deductions and Allowances.

1. The following deductions and allowances shall be made under this Schedule:—

(a) The amount of the tenths and first fruits, duties, and fees on presentations paid by any ecclesiastical person within the year preceding the year of assessment:

(b) The amount paid for procurations and synodals by ecclesiastical persons on an average of seven years preceding the year of assessment:

(c) The amount expended during the year preceding the year of assessment on repairs of any collegiate church or chapel, or chancel of a church, or of any college or hall in any university of the United Kingdom, by any ecclesiastical or collegiate body, rector, vicar, or other person bound to repair the same:

(d) The amount paid for public local rates, taxes, and assessments charged in respect of a rentcharge under the Tithe Act, 1836, for the year of assessment, except where the owner of the rentcharge has been charged therefor under rule 7 of No. VII. of this Schedule:

(e) The amount of any unredeemed land tax charged on lands, tenements, hereditaments, and heritages, under the Land Tax Act, 1797:

(f) The amount charged on lands, tenements, hereditaments, and heritages, by a public rate or assessment in respect of draining, fencing, or embanking:

(g) The amount expended by the landlord or owner of lands on an average of the twenty-one preceding years, in the making or repairing of sea walls or other embankments necessary for the preservation or protection of the lands against the encroachment or overflowing of the sea or any tidal river, although the sums expended may not have been charged on the lands by a public rate or assessment:

Provided that this rule shall not apply within the administrative county of London so far as respects the deductions allowed by the Valuation (Metropolis) Act, 1869.

2. The foregoing allowances shall (unless the payments to which they relate, or any part thereof, be made by a tenant) be made from the assessment on the property concerned, save as is hereinafter provided.

3. The allowances granted under paragraphs (a), (b) and (c) of rule 1 may be granted to the body or person therein described in one sum, either by deduction from the assessment, if any, on such body or person, or by repayment, but any allowance made under rule 1 on account of charges payable in respect of tithe rentcharge shall be granted by repayment only.

4.—(1) Where it is shown to the satisfaction of the Commissioners of Inland Revenue that the landlord of lands in Scotland is by law—

(a) charged with any public rates, taxes, or assessments which in England are by law a charge on the occupiers of lands; or

(b) charged with any public rates or taxes or other public burdens, the like whereof are not chargeable on lands in England,

the said Commissioners shall cause such relief to be given in respect of tax as is just and reasonable having regard to the additional burden on the landlord;

(2) Relief under this rule may be given in accordance with such regulations as the said Commissioners may prescribe, either by abatement from the assessment, or by repayment of tax.

5. The person entitled to any of the foregoing allowances which have not been made by way of deduction or abatement from the assessment and which may be made by repayment, may claim the allowance at any time within three years after the expiration of the year of assessment, before the general commissioners of the division in which the property charged with the payments is situate.

6. The general commissioners on proof that the claimant is entitled to the allowance shall certify the particulars and amount thereof to the special commissioners, who shall issue an order for repayment.

7.—(1) Where tax is charged upon annual value estimated otherwise than by relation to profits, the following provisions shall have effect:—

(a) In the case of an assessment on lands inclusive of the farmhouse and other buildings (if any), the amount of the assessment shall, for the purposes of collection, be reduced by a sum equal to one-eighth part thereof; and

(b) In the case of an assessment upon any house or building (except a farmhouse or building included with lands in assessment), the amount of the assessment shall, for the purposes of collection, be reduced—

(i) Where the owner is occupier or chargeable as landlord, or where a tenant is occupier and the landlord undertook to bear the cost of repairs, by a sum equal to one-sixth part of that amount; and

(ii) Where a tenant is occupier and undertook to bear the cost of repairs, by such a sum, not exceeding one-sixth part of that amount, as may be necessary to reduce it to the amount of rent payable by him.

(2) Where the amount of the assessment in the case of lands (inclusive of the farmhouse and other buildings) is more than one-eighth, and in the case of any house or building (except a farmhouse or building included with lands in assessment) is more than one-sixth below the rent, after deducting from such rent any outgoing which should by law be deducted in making the assessment, this rule shall not apply.

8.—(1) If the owner of any land or houses to which this rule applies shows that the cost to him of maintenance, repairs, insurance, and management, according to the average of the preceding five years, has exceeded, in the case of land, one-eighth part of the annual value of the land as adopted under this Schedule, and, in the case of houses, one-sixth part of that value, he shall be entitled (*b*) in addition to any reduction of the assessment for the purposes of collection, on making a claim for the purpose, to repayment of the amount of the tax on the excess.

(2) For the purposes of this rule, the term "maintenance" shall

(*b*) Proviso added, Finance Act, 1919, s. 19, *infra*, p. 465.

include the replacement of farmhouses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent.

(3) This rule shall apply to any land (inclusive of farmhouses and other buildings, if any) the assessment on which is reduced for the purpose of collection, and to any house the annual value of which, as adopted under *Schedule A*, *does not exceed*—

(*a*) *where the house is situate in the metropolitan police district, including the City of London, one hundred and five pounds;*

(*b*) *where the house is situate in Scotland, ninety pounds;*

(*c*) *where the house is situate elsewhere* (*c*), *seventy-eight pounds.*

(4) In comparing, for the purpose of this rule, the cost of maintenance, repairs, insurance, and management of any land or houses with the annual value of the land or houses, the total cost of the maintenance, repairs, insurance and management on any land managed as one estate, or of any houses on any such land, shall be compared with the total annual value of the land or houses, as the case may be.

(5) All the provisions of *the Income Tax Acts which relate to claims for any allowance or deduction* (*d*), or the proof to be given with respect to those claims, shall apply to claims for repayment under this rule and the proof to be given with respect to those claims:

Provided that if the owner of any land or house makes and delivers to the surveyor of any district in which the land or house is wholly or partly situate a declaration as to the cost to him of maintenance, repairs, insurance, and management, and the surveyor is satisfied as to the correctness of the declaration, the amount of the allowance to which the owner is entitled under this rule shall be certified by the surveyor, and repayment shall thereupon be made in accordance with his certificate.

(6) In computing the five-year average for the purposes of this rule, the year shall be taken to be the year ending on the thirty-first day of March, or such other date as may be adopted by the owner of the land or houses with the consent of the surveyor of the district, and the five preceding years shall be taken to be those preceding the commencement of the year for which the tax in respect of which a claim for repayment is made is charged.

9.—(1) Where land has been demised at a reserved rent, without fine or other sum paid or contracted for in lieu of a reserved rent, and loss has been sustained on the growing crops or stock on the lands, or the lands or any part of them have been rendered incapable of cultivation for any year, by reason of flood or tempest, the general commissioners for the division in which the lands are situate, on proof to them that the owner has, in consideration of any such loss, allowed or agreed to allow, to the tenant an abatement of the whole or any part of the rent reserved or payable for any year of the term, may in like proportion make an abatement in the assessment under this Schedule for the year for which

(*c*) Amendments made, Finance Acts, 1919, s. 19; 1920, s. 29.

(*d*) Words substituted, Finance Act, 1920, s. 32, and Third Sched.

the abatement of rent has been made, and discharge therefrom the corresponding proportion of tax.

(2) Where any such loss is sustained on lands in the occupation of the owner, the commissioners may, on proof of the loss, make the like abatement and discharge of tax under this Schedule as might have been made if the land had been demised to a tenant, and the owner had made such abatement of rent proportionate to the loss sustained as the general commissioners consider would or ought to have been made in respect of such loss.

10. A person who—

(a) makes any false claim for an abatement under rule 9; or

(b) is guilty of any fraud or contrivance in making any such claim, or obtaining any such abatement; or

(c) fraudulently or untruly declares the amount or value of such loss, or the amount or value of any abatement made or agreed to be made in the rent of lands occupied by him on account of such loss, with the intention of fraudulently obtaining any such abatement,

shall forfeit the sum of fifty pounds and treble the amount of tax charged on him in respect of the lands.

11. A person who—

(a) aids, abets, or assists a person charged with tax in making any such false or fraudulent claim; or

(b) fraudulently or untruly declares the amount or value of any abatement made, or agreed to be made, in the rent of any lands, or the amount or value of any loss, with intent fraudulently to obtain for himself, his tenant, or for the owner or tenant of any lands any such abatement as aforesaid,

shall forfeit the sum of one hundred pounds.

No. VI.—Rules in respect of further Allowances.

1. The following further allowances shall be made under this Schedule:—

(a) The amount of the tax charged on any college or hall in any university of the United Kingdom, in respect of the public buildings and offices belonging to the college or hall, so far as not occupied by any individual member thereof or by any person paying rent for the same:

(b) The amount expended on repairs of the public buildings and offices of any such college or hall, and of the gardens, walks, and grounds for recreation, repaired and maintained by the funds of the college or hall:

(c) The amount of the tax charged on any hospital, public school, or almshouse, in respect of the public buildings, offices, and premises belonging thereto, and so far as not occupied by any individual officer or the master thereof whose total annual income, however arising, estimated in accordance with this Act,

amounts to one hundred and fifty pounds or more, or by a person paying rent for the same:

(d) The amount expended on repairs of any such hospital, public school, or almshouse, and of the offices belonging thereto, and of the gardens, walks, and grounds used for the sustenance or recreation of the hospitallers, scholars and almsmen respectively, which are repaired and maintained by the funds of the hospital, public school or almshouse:

(e) The amount of the tax charged on any building being the property of any literary or scientific institution, and used solely for the purposes of that institution, in which no payment is made or demanded for any instruction there afforded by lectures or otherwise, and so far as not occupied by an officer of the institution or by any person paying rent for the same.

2. The allowances under the foregoing rule shall be granted by the general commissioners for the division.

No. VII.—Rules as to Persons chargeable.

1. Save as in this Act provided in any particular case, tax under this Schedule shall be charged on and paid by the occupier for the time being.

2. Every person having the use of any lands or tenements shall be deemed to be the occupier thereof.

3. The tax on each assessment shall be levied on the occupier for the time being, without any new assessment, notwithstanding any change of occupation:

Provided that—

(a) An occupier who quits occupation shall be liable for the tax payable in respect of the period up to the date of his quitting occupation, so far as such tax falls to be ultimately borne by him:

(b) Nothing in this Act shall extend to authorise the levying upon an occupier for the time being of any tax under this Schedule which ought to have been levied upon and ultimately borne by any former occupier of the lands, tenements or hereditaments, and nothing herein contained shall affect any remedy under this Act for the levying of any such tax or any portion thereof, from such former occupier.

4. Tax under this Schedule shall be charged on all lands, tenements and hereditaments, whether occupied at the time of assessment or not, but if any house is or becomes unoccupied for the year or for part of the year of assessment, the tax shall not be levied thereon during the period while it is so unoccupied, and the general commissioners, on proof of the period during which the house was unoccupied, shall upon appeal discharge the tax in respect of that period.

5. If, after the making of an assessment, the lands are divided into two or more distinct occupations, the general commissioners, on the appli-

cation of the persons respectively interested, shall determine what proportion of the tax shall be paid or borne by each occupier, and the amount apportioned shall be collected and levied in like manner as if it had been an original assessment.

*6. In respect of any compositions, rents, or other payments in lieu of tithes the commissioners may, if they think fit—

(a) charge the occupiers of the lands from which the tithes arise; or

(b) charge the respective persons liable to make any such payments; and

(c) direct notices to be delivered to any such persons respectively for the purpose of obtaining returns of any such payments, and the like provisions and penalties shall apply as in the case of statements to be delivered of the annual value of lands.

*7.—(1) Where lands, tenements, or hereditaments are subject to a rentcharge under the Tithe Act, 1836, or to any other rentcharge in lieu of tithe, and the owner of such rentcharge makes a return thereof for the purpose of an assessment being made upon him, the commissioners may, if they think fit, charge him under this Schedule in respect of the rentcharge, deducting therefrom the public local rates, taxes, and assessments charged thereon in the preceding year.

(2) Where any such charge is made upon the owner of the rentcharge, the amount of the rentcharge shall be allowed as a deduction from the annual value in assessing the lands, tenements, and hereditaments upon which it is charged.

8. The assessment and charge shall be made upon the landlord in respect of—

(a) any dwelling-house in the occupation of a tenant which, with the buildings or offices belonging thereto, and the land occupied therewith, is of less annual value than ten pounds; and

(b) any land and tenements which are let for a period less than one year; and

(c) any house or building let in different apartments or tenements, and occupied by two or more persons severally. Any such house or building shall be assessed and charged as one entire house or tenement:

Provided that in each of the above cases in default of payment by the landlord, the tax may be levied upon the occupier or occupiers respectively.

9.—(1) The landlord or immediate lessor of any lands, houses, or buildings may, if the general commissioners think fit, be assessed and charged as if he were the occupier thereof, for any year of assessment in which a request in writing to that effect is received from him and for subsequent years until he shall by notice in writing cancel such request.

(2) Any such request or notice shall be delivered personally or be

sent by post to the clerk to the general commissioners on or before the thirty-first day of July in the year for which it is first to take effect.

(3) The tax so charged upon the landlord or immediate lessor may be recovered from him in the same manner as any other income tax is recoverable, but this provision shall not prejudice the right to recover the same, if necessary, by distraint upon the premises or property in respect of which the charge was made, in the same way as if the charge had been made upon the occupier for the time being.

10. Tax to be charged in respect of any house or tenement occupied by the accredited Minister of any foreign State shall be charged on and paid by the landlord or person immediately entitled to the rent of the house or tenement.

11. Tax to be charged in respect of any house, tenement, or apartment belonging to the Crown, in the occupation of any officer of the Crown, by right of his office or otherwise, except apartments in Royal palaces, shall be charged on and paid by the occupier on the annual value thereof.

12. Where a house is divided into distinct properties, and occupied by distinct owners or their respective tenants, such properties shall be separately assessed and charged on the respective occupiers thereof.

13.—(1) Any mortgagee or creditor in any heritable bond or wadset, in possession of the lands, tenements, hereditaments, or heritages mortgaged or secured, if in actual occupation of the same, shall be assessed and charged as an occupier, and if not in actual occupation, shall be liable to the like deduction as any landlord.

(2) In any settlement of accounts between such mortgagee or other creditor and the mortgagor or debtor, tax payable on interest due in respect of the mortgage or debt shall be allowed as money received on account of interest.

No. VIII.—Rules as to the right of persons by whom tax is paid to recoupment in certain cases.

1. A tenant occupier of any lands, tenements, hereditaments or heritages who pays the tax shall be entitled to deduct and retain in respect of the rent payable to the landlord for the time being (all sums allowed by the commissioners being first deducted), an amount representing the rate or rates of tax in force during the period through the said rent was accruing due for every twenty shillings thereof, the said deduction to be made out of the first payment thereafter made on account of rent, and any receiver on behalf of the Crown or other person receiving the rent shall allow the deduction on receipt of the residue of the rent:

Provided that in Scotland the said deduction from any rent due for the period ending on the fifteenth day of May shall be made at the rate of the tax in force at the commencement of that period:

Provided also that a tenant or occupier shall not be entitled to deduct

out of the rent any greater sum than the amount of tax charged in respect of such property as aforesaid, and actually paid by him.

2. A tenant who pays the tax shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid as rent.

3. An occupier of lands charged on the amount of any composition, rent, or payment for tithes arising therefrom who pays the tax shall on payment thereof be entitled to make the like deduction from any such composition, rent, or payment.

4.—(1) Where any lands, tenements, hereditaments, or heritages are subject to the payment of any annual sum, whether payable half-yearly or at any shorter or more distant period, a landlord, owner or proprietor who has been charged to tax under this Schedule or from whom tax is deductible under this rule or rule 1 or rule 3, shall be entitled on making such payment to deduct and retain thereout so much of the said tax as represents the rate or rates of income tax in force during the period through which the said payment was accruing due, for every twenty shillings thereof (the just proportion of any sums allowed by the commissioners being first deducted), and every receiver on behalf of the Crown, and every person to whom such payment is made shall, on receipt of the residue thereof, and without any charge for so doing, allow the deduction:

Provided that in Scotland the said deduction from any such payment due for the period ending on the fifteenth day of May shall be made at the rate of the tax in force at the commencement of that period:

Provided also that no such person as aforesaid who is also a tenant or the occupier of the lands, tenements, hereditaments, or heritages, shall be entitled to deduct out of any rent any greater sum than the amount of tax charged in respect of any such property and actually paid by him.

(2) In this rule "annual sum" means any yearly interest, annuity, rent, rentcharge (whether under the Tithe Act, 1836, or otherwise), fee farm rent, rent service, quit rent, feu duty, teind duty, stipend to a licensed curate, or other annual payment reserved or charged upon any lands, tenements, hereditaments, or heritages.

5. The landlord, owner or proprietor shall be acquitted and discharged of so much money as is represented by the deduction as if that sum had been actually paid.

6. Where under any Act passed before the twenty-eighth day of June, eighteen hundred and fifty-three, and in Ireland, under the Landed Property Improvement (Ireland) Act, 1847, or any Acts amending the same, an advance of public money to promote the improvement of lands has been made by way of loan, and the repayment thereof has been secured by a rentcharge upon the lands to be paid for a term of years, by which the principal sum advanced will eventually be repaid

with interest, the person paying any such rentcharge may deduct and retain thereout so much of the tax under this Schedule charged in respect of the lands, as represents the tax on one-third, and no more, of the amount payable at the rate or rates of tax in force during the period through which the payment was accruing due; and the collectors and receivers of such rentcharges shall allow such deduction upon receipt of the residue of such rentcharge then due.

7. A tenant occupier for the time being of any lands, tenements or hereditaments, who has been required to pay, and has paid, any sums charged in respect thereof under this Schedule which, under the provisions of this Act, ought to have been or ought to be paid by a former tenant or occupier, may deduct and retain out of any subsequent payment of rent to his landlord, the sum, or any part thereof, which ought to have been or ought to be so paid.

8. Where under rule 8 of No. VII. tax has been charged upon a landlord in respect of any premises mentioned in paragraph (a) or (b) of that rule, and in default of payment by the landlord the tax has been levied upon the occupier, the tax may be deducted and shall be allowed out of the next payment on account of rent.

9. Where under rule 8 of No. VII. tax has been charged upon a landlord in respect of any premises mentioned in paragraph (c) of that rule, and in default of payment by the landlord the tax has been levied upon the occupier or occupiers, the tax may be deducted and shall be allowed out of the next or any subsequent payment on account of rent.

10. If for the purpose of avoiding distraint upon any premises or property under paragraph (3) of rule 9 of No. VII. the occupier pays the tax, the amount thereof may be deducted and shall be allowed out of the next or any subsequent payment on account of rent.

11. As between the owner and a mortgagee of his property or any person having a charge thereon or entitled to any ground rent, rentcharge, annuity, or other annual sum payable thereout, the owner's right of deduction under these rules in respect of tax shall not be affected by any relief afforded under rule 7 of No. V.

No. IX.—Rules as to Place of Charge.

1. All properties shall be assessed and charged in the parish where they are situate, and not elsewhere, except as otherwise provided in the following rules.

2. Profits arising from canals, inland navigations, streams of water, drains or levels, railways or other roads or ways of a public nature and belonging to or vested in any company of proprietors or trustees, corporate or not corporate, may be included in one statement and assessed and charged in the parish in which the general accounts of the concern are usually made up.

3. Profits of a manor or royalty which extends into different parishes may be included in one statement and assessed and charged in the parish where the court of the manor or royalty is usually held.

4. Profits of all fines received by the same person may be included in one statement and assessed and charged in the parish where that person resides or, in the case of a body of persons, where that body has its head office.

*5. In the case of all lands the occupier, whether owner or tenant, or tenant under different owners, and whether the lands are situate in the same or in different parishes or divisions, shall return a statement in each parish in which any part of the lands is situate, and give a separate estimate of the lands in his occupation belonging to different owners, and if any such occupier wilfully omits to deliver any such statement in any parish, although he may not reside therein, he shall be charged for the lands omitted at treble the rate of tax in addition to any penalty for which he is liable.

*6. Lands held under the same demise, or occupied by the same person as owner, if they are wholly within the same division though situate in different parishes, may, if the commissioners are satisfied that the proportion in each parish, in respect of quantity, rent, or value, cannot be ascertained, be assessed and charged in either parish.

*7. In any such case if any lands extend into different divisions the assessment and charge shall be made in the division where the occupier resides.

8. Where a dwelling-house or any premises occupied therewith is situate in two or more parishes, the assessment and charge thereon shall be made in such one of those parishes only as the surveyor deems most expedient, and the surveyor shall notify to the commissioners acting for each of the said parishes the parish selected by him.

9. Where a mine is situate, or where its produce is manufactured, in a parish other than that in which the produce is sold, the profits of the mine shall be assessed and charged in the parish and division in which the mine is situate, or in which the produce is manufactured.

SCHEDULE B.

Tax under Schedule B shall be charged in respect of the occupation of all lands, tenements, hereditaments, and heritages in the United Kingdom for every twenty shillings of the assessable value thereof estimated in accordance with the rules of this Schedule.

In this Act the expression "assessable value" means in relation to tax under this Schedule an amount equal to twice the annual value of the lands, tenements, hereditaments, or heritages, or, in any case in which it is proved to the satisfaction of the commissioners concerned that any person occupying any lands and assessed to tax in respect thereof is not occupying those lands for the purpose of husbandry only, or mainly

for those purposes, and the Board of Agriculture and Fisheries on a reference to the Board by the Commissioners of Inland Revenue do not certify that the use of the lands by the occupier thereof for a purpose other than the purpose of husbandry is unreasonable, an amount equal to the annual value.

The expression "Board of Agriculture and Fisheries" means in the application of this Act to Scotland, the Board of Agriculture for Scotland, and in the application of this Act to Ireland, means the Department of Agriculture and Technical Instruction for Ireland.

Rules applicable to Schedule B.

Nothing in these rules shall affect the valuation of lands, tenements or hereditaments within the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is by that Act made conclusive, for the purposes of income tax, and rule 2 and any other rule which relates to the ascertainment of the value of such lands, tenements and hereditaments shall not apply within the administrative county of London, except in the case of hereditaments which are not included in such valuation list, or hereditaments of which it is necessary to make a separate valuation by reason of their not being separately valued in any such valuation list.

Rules.

1. Tax under this Schedule shall be charged in addition to the tax to be charged under Schedule A on all the properties in this Act directed to be charged to the said tax according to the general rule of No. I. of Schedule A:

Provided that there shall not be charged under this Schedule—

(a) any dwelling-house, or the domestic offices thereunto belonging, unless occupied, by virtue of one and the same demise, together with a farm of lands, or with a farm of tithes, for the purpose of farming the same; or

(b) any warehouse or other building occupied for the purpose of carrying on a trade or profession.

2. The rules of No. IV. of Schedule A shall apply with respect to estimating the annual value of land under this Schedule, subject to the following modifications:—

(a) Where any tenant of lands or tenements is subject to an agreement to pay or satisfy any rates, taxes, or assessments which are by law chargeable on or payable by the landlord, the amount thereof bonâ fide paid by the tenant in and for the year preceding the year of assessment, shall, in making the estimate, if the lands have been let within the seven preceding years be added to the rent reserved; if the lands or tenements were not let within the said period the estimate shall be made

according to the general rule of No. I. of Schedule A, with the like addition of the amount of any such payment:

(b) In the case mentioned in rule 11 of the said No. IV., the annual value shall be taken to be the rackrent at which the land could have been let by the year at the commencement of the demise as ascertained in accordance with this Act.

3. Rules 9, 10, and 11 of No. V. of Schedule A, relating to relief in the case of losses caused by flood or tempest, shall apply in the case of this Schedule as in the case of Schedule A, and as respects land the proprietor of which is shown to the satisfaction of the general commissioners to be an infant, idiot, or lunatic, or to be otherwise incapable of consenting to an abatement of the rent, an abatement and discharge of tax under this Schedule may be allowed by the general commissioners on proof to them of the loss in respect of the abatement of rent which in their opinion ought to have been made.

4. Rules 1, 2, 3, 4, and 5 of No. VII. of Schedule A, relating to the person chargeable, shall apply in the case of this Schedule as they apply in the case of Schedule A.

5.—(1) Any person occupying lands for the purposes of husbandry only may elect to be assessed and charged under Schedule D, and in accordance with the provisions and rules applicable thereto, instead of under this Schedule.

(2) The election of any such person shall be signified by notice in writing delivered personally or sent by post in a registered letter to the surveyor for the district within two months after the commencement of the year of assessment; and from and after the receipt of the notice the charge upon him for that year shall be under Schedule D, and the profits or gains arising to him from the occupation of the lands shall for all purposes be deemed to be profits or gains of a trade chargeable under that Schedule.

6. If a person who occupies, either as owner or otherwise, any lands for the purposes of husbandry only, shows at the end of any year of assessment to the satisfaction of the general commissioners that the profits or gains arising from that occupation during that year fell short of the assessable value of the lands under this Schedule, the income arising from that occupation shall be taken at the actual amount of those profits or gains, and if the whole of the tax has been paid, the amount overpaid shall be certified and repaid in like manner as tax is repaid under rule 6 of No. V. of Schedule A.

7. Any person occupying woodlands, who proves to the satisfaction of the general commissioners or of the special commissioners that those woodlands are managed by him on a commercial basis and with a view to the realization of profits, may elect to be assessed and charged to tax in respect of those woodlands under Schedule D instead of under this Schedule in the same manner as a person occupying lands for the

purposes of husbandry only, and Rule 5 shall apply accordingly, subject as follows:—

(a) Any such election shall extend to all woodlands so managed on the same estate, but woodlands which are or have been planted or replanted since the nineteenth day of July nineteen hundred and sixteen shall be treated for this purpose as being woodlands on a separate estate, if the person occupying those woodlands gives notice to the general or special commissioners within a year after the time when they are so planted or replanted ; and

(b) The election shall have effect, not only as respects the year of assessment, but also as respects all future years of assessment, so long as the woodlands are occupied by the person making the election:

(c) Any application to prove the aforesaid facts in any year in respect of the same woodlands must be made either to the general commissioners or to the special commissioners, and not to both.

8. The profits arising from lands occupied as nurseries or gardens for the sale of the produce (other than lands used for the growth of hops) shall be estimated according to the provisions and rules applicable to Schedule D, but shall be assessed and charged under this Schedule as profits arising from the occupation of lands.

Schedule C.

Tax under Schedule C shall be charged in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable out of any public revenue, for every twenty shillings of the annual amount thereof.

Rules applicable to Schedule C.

General Rules.

1. Tax under this Schedule—

(a) shall extend to all profits arising from interest, public annuities, dividends and shares of annuities payable in the United Kingdom out of any public revenue in the United Kingdom or elsewhere, in any year of assessment; and

(b) shall be charged by the commissioners designated for that purpose by this Act; and

(c) shall be paid by the persons and bodies of persons respectively intrusted with payment, on behalf of the persons entitled thereto.

2. No tax shall be chargeable in respect of—

(a) The stock, dividends or interest transferred to accounts in the books of the Bank of England in the name of the Treasury

or the National Debt Commissioners in pursuance of any Act of Parliament, but the Bank of England shall transmit to the special commissioners an account of the total amount thereof:

(b) The stock, dividends or interest belonging to the Crown in whatever name they may stand in the books of the Bank of England:

(c) The stock, dividends or interest of any accredited minister of any foreign State resident in the United Kingdom: Provided that if the same stand in the name of a trustee, the property therein of any such minister shall be proved by the trustee to the special commissioners:

(d) The interest or dividends on any securities of a foreign State or a British possession which are payable in the United Kingdom, where it is proved to the satisfaction of the Commissioners of Inland Revenue that the person owning the securities and entitled to the interest or dividends is not resident in the United Kingdom; but, save as provided by this Act, no allowance shall be given or repayment be made in respect of the tax on the interest or dividends on the securities of any foreign State or any British possession which are payable in the United Kingdom:

Provided that where the securities of a foreign State or British possession are held under any trust, and the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any powers under the trust, call upon the trustees at any time to transfer the securities to him absolutely free from any trust, that person shall, for the purposes of this provision, be deemed to be the person owning the securities.

The aforesaid relief may be given by the Commissioners of Inland Revenue either by way of allowance or repayment on a claim being made to them for the purpose.

3. Any bank carrying on a bonâ fide banking business in the United Kingdom shall be relieved, by repayment or otherwise, from tax under this Schedule in respect of the interest on any securities which the bank proves to the satisfaction of the special commissioners to represent subscriptions by the bank to any Government loan issued for the purposes of the present war either before or after the passing of this Act, and the bank shall include the amount of any such interest in the computation of its profits or gains for the purpose of assessment under Case I. of Schedule D.

Rules as to interest, &c., payable out of public revenue to or through the Bank of England or the Bank of Ireland, or by the National Debt Commissioners.

1. The Bank of England and the Bank of Ireland as respects any interest, annuities, dividends and shares of annuities and the profits attached thereto payable to them out of the public revenue of the United Kingdom, or payable out of any public revenue and intrusted to them for payment and distribution, and the National Debt Commissioners as respects interest, annuities and dividends payable by them or of which they have the distribution, shall, when any payment becomes due, deliver to the commissioners appointed to assess and charge the tax thereon true accounts in books provided for the purpose, of—

(a) the amounts of the interest, annuities, dividends, or shares of annuities and profits attached thereto payable to the Bank;

(b) all interest, annuities, dividends and shares of annuities intrusted to the Bank or to the National Debt Commissioners for payment to the persons entitled thereto; and

(c) the amount of tax chargeable thereon at the rate in force at the time of payment without any other deduction than is allowed by this Act.

2. The aforesaid accounts shall distinguish the separate account of each person.

3. The appropriate commissioners shall assess the tax chargeable on the accounts delivered to the best of their judgment and belief, and deliver the assessment books, signed by them, to the special commissioners.

4. The special commissioners shall cause to be made out two certificates showing the total amount of tax, the total amounts of the interest, annuities, dividends, and shares of annuities and profits attached thereto charged with tax, and the description of the persons or bodies of persons to whom the same are payable, or who have the distribution or are intrusted with the payment thereof.

5. One certificate shall be transmitted to the respective commissioners whose duty it is to make the assessments and the other to the Commissioners of Inland Revenue.

6. The Bank of England and the Bank of Ireland shall set apart the tax in respect of the amounts payable to them, and the said Banks and the National Debt Commissioners respectively shall, before any payment is made by them, retain the amount of the tax for the purposes of this Act.

7. The retaining of the amount shall be deemed a payment of the tax by the persons entitled to the interest, annuities, dividends, or shares of annuities, and shall be allowed by them on receipt of the residue thereof, and the Bank of England, the Bank of Ireland, and the

National Debt Commissioners respectively shall be acquitted and discharged of a sum equal to the amount retained as though that sum had been actually paid.

8. Money so set apart or retained and the amount of any tax charged on the trading profits of either Bank, shall be paid into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland, and every such payment shall be accompanied with a certificate, under the hands of two or more of the commissioners who made the assessment, of the amount of the assessment under which the payment is made.

9. Except as otherwise provided in any other enactments in force at the commencement of this Act, no assessment, charge or deduction of tax under these rules shall be made where any half-yearly payment in respect of interest, annuities, dividends, or shares of annuities does not exceed fifty shillings, but such interest, annuities, dividends or shares of annuities shall be assessed and charged under Case III. of Schedule D.

10. No deduction of tax under these rules shall be made from any dividends in respect of which such certificate as is mentioned in section twenty-eight of the Charitable Trusts (Amendment) Act, 1855, has been given to the Bank of England.

Rules as to interest, &c., with the payment of which persons other than the Bank of England, the Bank of Ireland and the National Debt Commissioners are intrusted.

1. Every person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) who is intrusted with the payment of any dividends which are payable to any persons in the United Kingdom out of any public revenue other than that of the United Kingdom shall, within one month after being so required by notice published in the Gazette, deliver to the Commissioners of Inland Revenue an account in writing, giving his name and residence, and a description of the dividends intrusted to him for payment, and shall also, on demand by the inspector authorised for that purpose by the Commissioners of Inland Revenue, deliver to him, for the use of the special commissioners, true and perfect accounts of the amount of all such dividends.

2. The special commissioners shall have all necessary powers in relation to the examining, auditing, checking and clearing the books and accounts of dividends delivered under the authority of this Act, and shall assess and charge the dividends at the rate of tax in force at the time of payment, but reduced by the amount of the exemptions (if any) allowed by them, and shall give notice of the amount so assessed and charged to the person intrusted with payment.

3. The person intrusted with payment shall out of the moneys in

his hands pay the tax on the dividends on behalf of the persons entitled thereto, and shall be acquitted in respect of all such payments, and the provisions of this Act shall apply as in the case of dividends payable as aforesaid out of the public revenue of the United Kingdom.

4. The person intrusted with payment shall pay the tax into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland, and in default of payment it shall be recovered from him in the same manner as other income tax assessed and charged upon him may be recovered.

5. A person intrusted with payment who does all such things as are necessary to enable the tax to be assessed and paid shall receive as remuneration an allowance, to be calculated by reference to the amount of the dividends paid from which tax has been deducted, and to be fixed by the Treasury at a rate not being less than thirteen shillings and sixpence for every thousand pounds of that amount.

6. A person intrusted with payment who neglects or refuses to deliver any such account as required by these rules shall forfeit the sum of one hundred pounds over and above the tax chargeable on any such dividends.

7. The following persons, that is to say:—

(a) Any person having the ordinary custody of any book, or making any list ordinarily kept in the United Kingdom, wherein the right or title of the person to whom the payment is to be made is shown by the registration or entry of his name;

(b) Any banker or person acting as a banker, who sells or otherwise realises coupons for any dividends (save such as are payable in the United Kingdom only), and pays over the proceeds to any person or carries the same to his account;

(c) Any person who by means of coupons received from any other person or otherwise on his behalf, obtains payment of any dividends elsewhere than in the United Kingdom;

(d) Any dealer in coupons who purchases coupons for any dividends (save such as are payable in the United Kingdom only) otherwise than from a banker or person acting as a banker, or another dealer in coupons,

shall be included as being persons intrusted with the payment of dividends within the meaning of these rules.

8. Nothing in these rules shall impose on any banker or other person acting as a banker the obligation to disclose any particulars relating to the affairs of any person on whose behalf he may be acting.

9. In these rules the expression "dividends" includes interest, annuities, dividends, and shares of annuities, and the expressions "coupons" and "coupons for any dividends," include warrants for or bills of exchange purporting to be drawn or made in payment of any dividends.

Rules as to interest, &c., payable out of public revenue by any public department.

1. Interest, annuities, dividends and shares of annuities payable out of any public revenue by any public office or department of the Crown shall be charged under this Schedule by the commissioners for offices in the said public office or department.

2. The said commissioners shall exercise the like powers and duties as are possessed by the commissioners empowered to charge interest, annuities, dividends, and shares of annuities payable out of the public revenue in other cases, and shall appoint assessors and collectors from the officers in their office or department entrusted with the payment thereof.

3. The said assessors and collectors shall, when any such payments are made as aforesaid, compute the tax thereon and certify the same to the proper officer for payment, who shall retain the tax and pay the same into the general account of the Commissioners of Inland Revenue at the Bank of England or the Bank of Ireland.

SCHEDULE D.

1. Tax under this Schedule shall be charged in respect of—

(a) The annual profits or gains arising or accruing—

(i) to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere; and

(ii) to any person residing in the United Kingdom from any trade, profession, employment, or vocation, whether the same be respectively carried on in the United Kingdom or elsewhere; and

(iii) to any person, whether a British subject or not, although not resident in the United Kingdom, from any property whatever in the United Kingdom, or from any trade, profession, employment, or vocation exercised within the United Kingdom; and

(b) All interest of money, annuities, and other annual profits or gains not charged under Schedule A, B, C or E, and not specially exempted from tax;

in each case for every twenty shillings of the annual amount of the profits or gains.

2. Tax under this Schedule shall be charged under the following cases respectively; that is to say,—

Case I.—Tax in respect of any trade not contained in any other Schedule;

Case II.—Tax in respect of any profession, employment, or vocation not contained in any other Schedule;

Case III.—Tax in respect of profits of an uncertain value and of other income described in the rules applicable to this Case;

Case IV.—Tax in respect of income arising from securities out of the United Kingdom, except such income as is charged under Schedule C;

Case V.—Tax in respect of income arising from possessions out of the United Kingdom;

Case VI.—Tax in respect of any annual profits or gains not falling under any of the foregoing Cases, and not charged by virtue of any other Schedule;

and subject to and in accordance with the rules applicable to the said Cases respectively.

RULES APPLICABLE TO SCHEDULE D.

Rule applicable to Case I.

The tax shall extend to every trade carried on in the United Kingdom or elsewhere, other than a trade relating to lands, tenements, hereditaments, or heritages directed to be charged under Schedule A, and shall be computed on the full amount of the balance of the profits or gains upon a fair and just average of three years ending on that day of the year immediately preceding the year of assessment on which the accounts of the said trade have been usually made up, or on the fifth day of April preceding the year of assessment.

Rule applicable to Case II.

The tax shall extend to every employment by retainer in any character whatever, whether such retainer shall be annual or for a longer or shorter period, and to all profits and earnings of whatever value arising from employments, and shall be computed on the full amount of the balance of the profits, gains and emoluments of the professions, employments or vocations upon a fair and just average of three years ending as in Case I.

Rules applicable to Cases I. and II.

1.—(1) The tax shall be charged without any other deduction than is by this Act allowed.

(2) Where the trade, profession, employment, or vocation has been set up and commenced within the said period of three years, the computation shall be made on the average of the profits or gains for one year from the period of the first setting up of the same, and where it has been set up and commenced within the year of assessment, the computation shall be made according to the rules applicable to Case VI.

2.—(1) Weekly wage-earners shall be assessed and charged to tax in respect of their wages in each quarter of the year instead of in the whole year, and shall in all cases be assessed and charged in respect of the actual amount of their wages for that quarter, and as respects any such assessment and charge and the collection of the tax the provisions of this Act shall have effect as if tax were charged for each quarter instead of for the year.

(2) This rule applies only to weekly wage-earners employed by way of manual labour in respect of the wages arising from that employment, and does not apply to persons employed as clerks, typists, draftsmen, or in any other similar capacity.

(3) If any question arises whether any person is a person to whom this rule applies, that question shall be determined jointly by the Commissioners of Inland Revenue and the general commissioners, and their determination shall be final and conclusive on the question.

3. In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of—

(a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession, employment, or vocation:

(b) any disbursements or expenses of maintenance of the parties, their families or establishments or any sums expended for any other domestic or private purposes distinct from the purposes of such trade, profession, employment or vocation:

(c) the rent or annual value of any dwelling-house or domestic offices or any part thereof, except such part thereof as is used for the purposes of the trade or profession: Provided that where any such part is so used, the sum so deducted shall be such as may be determined by the commissioners, and shall not exceed two-thirds of the annual value or of the rent bonâ fide paid for the said dwelling-house or offices:

(d) any sum expended for repairs of premises occupied, or for the supply, repairs, or alterations of any implements, utensils, or articles employed for the purposes of the trade, profession, employment or vocation, beyond the sum usually expended for those purposes according to an average of three years preceding the year of assessment:

(e) any loss not connected with or arising out of the trade, profession, employment or vocation:

(f) any capital withdrawn from, or any sum employed or intended to be employed as capital in such trade, profession, employment or vocation:

(g) any capital employed in improvements of premises occupied for the purposes of the trade, profession, employment or vocation:

(h) any interest which might have been made if any such sums as aforesaid had been laid out at interest:

(i) any debts, except bad debts proved to be such to the satisfaction of the commissioners and doubtful debts to the extent that they are respectively estimated to be bad. In the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof:

(j) any average loss beyond the actual amount of loss after adjustment:

(k) any sum recoverable under an insurance or contract of indemnity:

(l) any annual interest, or any annuity, or other annual payment payable out of the profits or gains:

(m) any royalty or other sum paid in respect of the user of a patent.

4.—(1) Where any person has paid excess profits duty (*e*), the amount so paid shall be allowed as a deduction in computing the profits or gains of the year which included the end of the accounting period in respect of which the excess profits duty has been paid; but where any person has received repayment of any amount previously paid by him by way of excess profits duty, the amount repaid shall be treated as profit for the year in which the repayment is received:

Provided that any excess profits duty which becomes chargeable by virtue only of the provisions of the Finance Act, 1918, relating to profits arising from the sale of trading stock otherwise than in the ordinary course of trade, shall not be deemed to be excess profits duty for the purposes of this rule.

(2) The payment of excess profits duty (*e*) shall not be deemed to be a specific cause for the purpose of rule 3 of the miscellaneous rules applicable to this Schedule.

(3) Where in any year of assessment the profits or gains from which a deduction may be made under this rule come into computation, but owing to the time at which the amount of the excess profits duty (*e*) became ascertained it was impracticable to give effect to the deduction when assessing income tax, the amount by which that tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty or, if there is no excess profits duty, shall be repaid to the taxpayer.

(4) This rule shall apply to sums actually paid in respect of munitions Exchequer payments as it applies to excess profits duty, except that the relief to the taxpayer under the last preceding paragraph of this rule shall in all cases be given by means of repayment and not by deduction.

(5) Any excess profits duty and any munitions Exchequer payments which under the provisions contained in section forty-eight of the Finance Act, 1916 (which provides for the adjustments of excess profits duty and munitions Exchequer payments in the case of controlled establishments), are remitted for the purpose of collection, shall not be deemed to have been paid for the purposes of this rule.

(6) The expression "munitions Exchequer payments" means any sums paid or payable into the Exchequer under section four of the Munitions of War Act, 1915, on account of the excess of the net profits of a controlled establishment.

5.—(1) The computation of tax shall be made exclusive of the profits or gains arising from lands, tenements, hereditaments, or heritages occupied for the purpose of the trade or profession:

(*e*) Paras. (1), (2), (3) applied with reference to corporation profits tax, Finance Act, 1920, s. 31.

Provided that where any lands, tenements, hereditaments, or other premises of whatsoever description used for the purpose of any trade, profession, employment, or vocation, are situate outside the United Kingdom, no deduction or set-off shall, in estimating the amount of annual profits or gains arising or accruing from that trade, profession, employment, or vocation, in any manner be allowed on account or in respect of the annual value of those premises.

(2) Where, in estimating the amount of annual profits or gains arising or accruing from any trade, profession, employment, or vocation and chargeable to tax under this Schedule, any sum is deducted on account of the annual value of the premises used for the purpose of such trade, profession, employment, or vocation, the sum so deducted shall not exceed the amount of the assessment of the premises for the purpose of tax under Schedule A as reduced for the purpose of collection:

Provided that this provision shall not apply in the case of any premises being mills, factories or other similar premises (*f*).

6.—(1) In charging the profits or gains of a trade under this Schedule, such deduction may be allowed as the commissioners having jurisdiction in the matter may consider just and reasonable, as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the trade and belonging to the person by whom it is carried on.

(2) Where machinery or plant is let to the person by whom the trade is carried on, on the terms of his being bound to maintain the same and deliver it over in good condition at the end of the lease, the machinery or plant shall be deemed to belong to that person for the purpose of this rule.

(3) Where full effect cannot be given to any such deduction in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year, and deemed to be part of that deduction, or, if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) Any claim in respect of the aforesaid deduction shall be included in the annual statement required to be delivered under this Act of the profits or gains of the trade for which the machinery or plant is used, and the additional commissioners, in assessing those profits or gains, shall make such allowance in respect thereof as they think just and reasonable.

(5) Where machinery or plant is let upon such terms that the burden of maintaining and restoring it falls upon the lessor, he shall be entitled, on presenting a claim to the general or special commissioners, to have repaid to him such a portion of the sum assessed and charged in respect

(*f*) But see now Finance Act, 1919, s. 18 (1), *infra*, p. 464.

of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the tax upon an amount which the commissioners consider just and reasonable as representing the diminished value by reason of wear and tear of the machinery or plant during the year.

No such claim shall be allowed unless made within twelve months after the expiration of the year of assessment.

(6) No deduction for wear and tear, or repayment on account of any such deduction, shall be allowed for any year if the deduction, when added to the deductions allowed on that account for any previous years to the person by whom the trade is carried on, will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or re-instatement.

(7) Where an application is made to the Commissioners of Inland Revenue for the alteration of the amount of any deduction for wear and tear, the Commissioners, unless they are of opinion that the application is frivolous or vexatious, shall refer the case to the Board of Referees, and that Board shall, if they are satisfied that the application is made by or on behalf of any considerable number of persons engaged in any class of trade or business, take the application into their consideration, and determine the deduction to be allowed.

In this rule the expression "Board of Referees" means any Board of Referees appointed for the purpose of Part III. of the Finance (No. 2) Act, 1915, or, if there is no such Board, a Board of Referees to be appointed for the purpose of this rule by the Treasury.

7. In estimating the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade chargeable under this Schedule there shall be allowed to be deducted as expenses incurred in any year so much of any amount expended in that year in replacing any plant or machinery which has become obsolete as is equivalent to the cost of the plant or machinery replaced after deducting from that cost the total amount of any allowances which have at any time been made in estimating profits or gains as aforesaid on account of the wear and tear of that plant and machinery, and any sum realised by the sale of that machinery or plant.

8.—(1) Where a person charged or chargeable with tax in respect of any trade, profession or vocation which has been set up or commenced within the period of three years upon the average of which the profits or gains are to be taken, or within the year of assessment, proves at the end of the year of assessment to the satisfaction of the commissioners by whom the assessment has been or can be made that the actual profits or gains arising from the trade, profession or vocation in the year of assessment fall short of the profits or gains as computed in accordance with this Act, he shall be entitled to be charged on the actual amount of the profits or gains so arising, instead of on the amount of the profits or gains so computed, and, if he has paid the full amount of the tax on the

profits or gains so computed, he shall be entitled to repayment of the amount overpaid.

(2) Where a trade, profession, or vocation is discontinued in any year, any person charged or chargeable with tax in respect thereof, shall be entitled to be charged on the actual amount of the profits or gains arising therefrom in that year, and shall also, if he proves to the satisfaction of the commissioners by whom the assessment has been or could have been made, that the total amount of the tax paid for the three previous years in respect of that trade, profession, or vocation exceeds the total amount which would have been paid if he had been assessed for each of those years on the actual amount of the profits or gains arising in each year, be entitled to repayment of the excess.

9.—(1) If a person charged under this Schedule ceases within the year of assessment to carry on the trade, profession, or vocation in respect of which the assessment is made, and is succeeded therein by another person, the surveyor shall, within four months from the fifth day of April next after any such change, certify to the general commissioners for the division in which the assessment is made the particulars thereof, and the full name and residence of the person charged and of his successor and the date of the change, if the same be known to the surveyor.

(2) On receipt of the certificate the commissioners shall cause notice to be given to the respective persons of a meeting of the commissioners to consider it, and after examination of the said persons, if they attend, or on other satisfactory proof of the facts, the commissioners shall adjust the assessment by charging the successor with a fair proportion thereof from the time of his succeeding to the trade, profession, or vocation, and relieving the person originally charged from a like amount.

(3) The determination of the commissioners on any such certificate shall be final, and the sum apportioned to each such person shall be recoverable from him in like manner as if he had been charged under the original assessment.

(4) If either of the said persons has paid in respect of an assessment so certified more than the proportion which appears by the determination of the commissioners to be chargeable on him, the amount overpaid shall, when recovered from the person liable, be paid to the person by whom the overpayment was made.

10.—(1) Where a trade or profession is carried on by two or more persons jointly, the tax in respect thereof shall be computed and stated jointly and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

(2) The precedent partner, that is to say, the partner who, being resident in the United Kingdom—

(i) is first named in the agreement of partnership; or

(ii) if there be no agreement, is named singly or with precedence to the other partners in the usual name of the firm; or

(iii) is the precedent acting partner, if the person named with precedence is not an acting partner;

shall make and deliver a statement of the profits or gains of such trade or profession, on behalf of himself and the other partners, and declare therein the names and residences of the other partners, under the penalty prescribed by this Act for default in delivering a statement.

(3) Where no partner is resident in the United Kingdom the statement shall be made and delivered by the agent, manager, or factor of the firm resident in the United Kingdom.

(4) Any other partner may, if a statement has been delivered as aforesaid, notify the fact that he is a partner together with his name and place of abode, without returning the amount of tax payable in respect of the partnership, but the respective commissioners may, if they think fit, require from every partner a like statement and the like information and evidence, as they are entitled to require from the precedent partner.

11. If within the year of assessment or the period of average upon which the assessment is to be based a change occurs in a partnership of persons engaged in any trade or profession, by reason of death, or of dissolution of the partnership as to all or any of the partners, or by the admission of a new partner, or if any person succeeds to a trade or profession, the tax payable in respect of the partnership, or any of the partners, or of the person so succeeding shall be computed according to the profits or gains of the trade or profession during the respective periods prescribed by this Act, notwithstanding the change or succession, unless the partners or the person succeeding to the trade or profession prove to the satisfaction of the commissioners that the profits or gains have fallen or will fall short from some specific cause, to be alleged to them, since such change or succession took place, or by reason thereof.

12.—(1) Where any trade or business is carried on by two or more persons in partnership, and the control and management of such trade or business is situate abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the said partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the said partnership are resident in the United Kingdom and that some of the trading operations of the said partnership are conducted within the United Kingdom.

(2) Where any part of the trade or business of a partnership firm whose management and control is situate abroad consists of trading operations within the United Kingdom, the said firm shall be chargeable in respect of the profits of such trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more of the members of the said firm are resident in the United Kingdom:

Provided that for the purpose of charging any such firm in respect of

the profits of the said trading operations within the United Kingdom, an assessment may be made on the said firm in respect of the said profits in the name of any partner resident in the United Kingdom.

13. A person who carries on, either solely or in partnership, two or more distinct trades the profits of which are chargeable under the rules of this Schedule, may deduct from or set off against the profits as computed under this Act in respect of one or more such trades, the loss so computed sustained in any other such trade, and may make separate statements as to each such trade.

14. Any bank which has obtained relief from tax under Schedule C by reason of the provisions of rule 3 of the general rules applicable to Schedule C in respect of the interest on any securities representing subscriptions of the bank to a war loan shall include the amount of any such interest in the computation of its profits or gains for the purpose of assessment under Case I. of this Schedule.

15.—(1) Where an assurance company carries on life assurance business in conjunction with assurance business of any other class, the life assurance business of the company shall for the purposes of this Act be treated as a separate business from any other class of business carried on by the company.

(2) In ascertaining whether an assurance company has sustained a loss in respect of its life assurance business for the purpose of setting off such loss against the profits of any other business carried on by the company, or for the purpose of obtaining an adjustment of its liability by reference to the loss and to the aggregate amount of its income under the provisions contained in this Act, any income of the company derived from the investments of its life assurance fund shall be treated as parts of the profits of the company acquired in that business.

16. Every statement of profits to be charged under this Schedule which is made by any person—

(i) on his own account; or

(ii) on account of some other person for whom he is chargeable, or who is chargeable in his name,

shall include every source of income so chargeable, and a person shall be chargeable in respect of the whole of the tax so chargeable in one and the same division and by the same commissioners:

Provided that where the same person is engaged in different partnerships or in different trades in different places, a separate assessment and charge shall be made in respect of each concern at the place where, if singly carried on, it would be assessed and charged under the provisions of this Act.

17. Where a person delivers a statement of profits as aforesaid on behalf of some other person, or of a body of persons the statement shall be delivered in the division where the person delivering the statement or the body of persons respectively would be assessable and chargeable if acting on his or their own behalf.

Rules applicable to Case III.

1. The tax shall extend to—

(a) any interest of money, whether yearly or otherwise, or any annuity, or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods;

(b) all discounts;

(c) profits on securities bearing interest payable out of the public revenue other than such as are charged under Schedule C;

(d) interest, annuities, dividends and shares of annuities payable out of any public revenue where the half-yearly payments in respect thereof do not exceed fifty shillings and are not chargeable under Schedule C;

(e) interest paid or credited in full without deduction of tax by any savings bank to any depositor;

(f) interest on any Exchequer bonds issued under the authority of the Treasury during the continuance of the present war and a period of six months thereafter and on any securities issued under the War Loan Acts, 1914 to 1917, or any Act amending those Acts, in cases where such interest is paid without deduction of tax.

2. The tax shall be computed in each case on the full amount arising within the year ending on that day of the year preceding the year of assessment on which the accounts are usually made up, or on the fifth day of April preceding the year of assessment, and shall be paid on the actual amount as aforesaid without any deduction.

3—(1) Where an assurance company not having its head office in the United Kingdom carries on life assurance business through any branch or agency in the United Kingdom, any income of the company from the investments of its life assurance fund (excluding the annuity fund, if any), wherever received, shall, to the extent provided in this rule, be deemed to be profits comprised in this Schedule and shall be charged under this Case.

(2) Such portion only of the income from the investments of the life assurance fund for the year preceding the year of assessment shall be so charged as bears the same proportion to the total income from those investments as the amount of premiums received in that year from policy holders resident in the United Kingdom and from policy holders resident abroad whose proposals were made to the company at or through its office or agency in the United Kingdom bears to the total amount of the premiums received by the company:

Provided that in the case of an assurance company having its head office in any British possession, the Commissioners of Inland Revenue may, by regulation, substitute some basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be so charged as being income derived from business carried on in the United Kingdom.

(3) Every such charge shall be made by the special commissioners as though the company under the provisions of this Act had required the proceedings relating to the charge to be had and taken before those commissioners.

(4) Where a company has already been charged to tax, by deduction or otherwise, in respect of its life assurance business, to an amount equal to or exceeding the charge under this rule, no further charge shall be made under this rule, and where a company has already been so charged, but to a less amount, the charge shall be proportionately reduced.

4. If the commissioners find that lands which have been charged under Schedule B on the assessable value, and which are occupied by a dealer in cattle or a dealer in or a seller of milk, are insufficient for the keep of the cattle brought on to the lands, so that the assessable value affords no just estimate of the profits, they may require a statement of the profits to be delivered, and charge such further sum thereon as, together with the charge under Schedule B, will make up the full sum wherewith the dealer or seller ought to be charged in respect of the like amount of profits charged according to rule 2 of the rules applicable to this Case.

Rules applicable to Case IV.

1. The tax in respect of income arising from securities in any place out of the United Kingdom shall be computed on the full amount thereof arising in the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom, to the same deductions and allowances as if it had been so received, and to the deduction, where such a deduction cannot be made under any other provision of this Act, of any sum which has been paid in respect of income tax in the place where the income has arisen, and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom, and the provisions of this Act (including those relating to the delivery of statements) shall apply accordingly.

2. The foregoing rule shall not apply—

(a) to any person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that,

being a British subject, he is not ordinarily resident in the United Kingdom; or

(b) to income arising from such securities as aforesaid which form part of the investments of the foreign life assurance fund of an assurance company.

The tax in any case shall be computed on the full amount, so far as the same can be computed, of the sums which have been, or will be, received in the United Kingdom in the year of assessment without any deduction or abatement.

3. Any person aggrieved by any decision of the Commissioners of Inland Revenue, on a question of domicile or residence under the last preceding rule, shall have the same right to require those Commissioners to state a case on the question as an appellant has to require the general or special commissioners to state a case on a point of law, and the provisions of this Act shall apply accordingly.

Rules applicable to Case V.

1. The tax in respect of income arising from stocks, shares or rents in any place out of the United Kingdom shall be computed on the full amount thereof on an average of the three preceding years, as directed in Case I., whether the income has been or will be received in the United Kingdom or not, subject, in the case of income not received in the United Kingdom, to the same deductions and allowances as are provided in rule 1 of the rules applicable to Case IV., and the provisions of this Act, including those relating to the delivery of statements, shall apply accordingly.

2. The tax in respect of income arising from possessions out of the United Kingdom, other than stocks, shares or rents, shall be computed on the full amount of the actual sums annually received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom, on an average of the three preceding years as directed in Case I., without any deduction or abatement other than is therein allowed.

3. Rule 1 of the foregoing rules shall not apply—

(a) to a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom; or

(b) to the income therein described arising from the investments of the foreign life assurance fund of an assurance company;

and in such cases the computation shall be made in accordance with rule 2.

4. Rule 3 of the rules applicable to Case IV. shall apply to this Case

Rules applicable to Case VI.

1. The nature of the profits or gains, and the basis on which the amount thereof has been computed, including the average, if any, taken thereon, shall be stated to the commissioners.

2. The computation shall be made, either on the full amount of the profits or gains arising in the year of assessment, or according to an average of such a period, being greater or less than one year, as the case may require, and as may be directed by the commissioners.

3. Every such statement and computation shall be made to the best of the knowledge and belief of the person in receipt of or entitled to the profits or gains.

Miscellaneous Rules applicable to Schedule D.

1. Tax under this Schedule shall be charged on and paid by the persons or bodies of persons receiving or entitled to the income in respect of which tax under this Schedule is hereinbefore directed to be charged.

2. A person shall not be charged to tax under this Schedule as a person residing in the United Kingdom, in respect of profits or gains received in respect of possessions or securities out of the United Kingdom, who is in the United Kingdom for some temporary purpose only, and not with any view or intent of establishing his residence therein, and who has not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment, but if any such person resides in the United Kingdom for the aforesaid period he shall be so chargeable for that year.

3.—(1) If a person charged under this Schedule, whether the computation has been made on the profits of one year or on an average of years, ceases to carry on the trade, profession, employment or vocation in respect of which the assessment was made, or dies or becomes bankrupt, before the end of the year of assessment, or from any other specific cause is deprived of or loses the profits or gains so computed, he or his executors or administrators may, within three months after the end of the year of assessment, apply to the general commissioners of the division for the amendment of the assessment.

(2) The general commissioners, on proof to their satisfaction that paragraph (1) of this rule applies to the case, shall cause the assessment to be amended or vacated, and give such relief as is just, and shall, if necessary, direct repayment to be made of any sum which has been overpaid.

(3) A person who has succeeded to the trade, profession or vocation of a person charged shall, subject to the provisions of rule 9 of the rules applicable to Cases I. and II., be liable to pay the full tax charged without any new assessment, and no relief under this rule shall be granted in any such case unless the person so succeeding

proves, to the satisfaction of the commissioners, that the profits or gains have fallen short, from some specific cause, since, or by reason of, the succession.

4.—(1) A person engaged in a trade, profession, employment, or vocation shall be assessable and chargeable in the parish—

(a) where the trade, profession, employment, or vocation is carried on, whether carried on wholly or in part only within the United Kingdom, and whether he is engaged in one or more of such concerns; or

(b) where he ordinarily resides,

except that a person engaged in a trade within the United Kingdom carried on by the manufacture of goods, wares, or merchandise shall be assessable and chargeable—

(a) at the place of manufacture, although the sales thereof be elsewhere; or

(b) where he ordinarily resides.

(2) A person who is a householder and not engaged in a trade, profession, employment, or vocation shall be assessable and chargeable in the parish in which his dwelling-house is situate, or where he ordinarily resides.

(3) A person not engaged in a trade, profession, employment, or vocation, who has two or more places of ordinary residence, shall be assessable and chargeable at either such place.

(4) A person who is neither a householder, nor engaged in a trade, profession, employment, or vocation, who has a place of ordinary residence, shall be assessable and chargeable in the parish in which he ordinarily resides.

(5) Every other person not hereinbefore described shall be assessable and chargeable in the parish where he resides at the time of the issue of the general notices under this Act, or where he first comes to reside after the time of the issue of those general notices.

(6) Every assessment and charge made in pursuance of the above provisions shall be valid and effectual, notwithstanding the subsequent removal of the person from the parish in which he is assessed or charged.

(7) For the purpose of ascertaining the proper parish of assessment and charge, every person who delivers a list or statement under this Act shall deliver at the same time a signed declaration stating—

(a) where he is assessable and chargeable; and

(b) whether he is or is not engaged in a trade, profession, employment, or vocation, and, if so, the place within the United Kingdom where it is carried on, and particulars of every trade, profession, employment, or vocation in which he shall be engaged in such place, whether it be carried on wholly or partly within the United Kingdom.

5. The commissioners may require a person who has two residences, or who carries on or exercises a trade or profession in different parishes, or in a parish other than the parish of his ordinary residence, to deliver in each such parish the like lists, declarations, and statements as he is required to deliver in the parish where he ought to be assessed and charged, but no such person shall by reason thereof be liable to any double charge.

6. Where any creditor on any rates or assessments not chargeable as profits is entitled to any interest of money, the proper officer having the management of the accounts may be charged with the tax payable thereon, and shall be answerable for all matters necessary to enable the tax to be duly charged and for payment thereof, as if the rates or assessments were profits chargeable to tax, and shall be, in like manner, indemnified in respect of all such matters as if the said rates or assessments were chargeable.

7.—(1) Where—

(a) any interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, shares, or securities of any foreign or colonial company, society, adventure, or concern; or

(b) any annuities, pensions, or other annual sums payable out of the funds of any institution in India,

are intrusted to any person in the United Kingdom for payment to any persons in the United Kingdom, the same shall be assessed and charged to tax under this Schedule by the special commissioners.

(2) All the provisions of Schedule C relating to the tax to be assessed and charged in respect of dividends payable out of any public revenue other than that of the United Kingdom, and intrusted to any person (other than the National Debt Commissioners or the Bank of England or the Bank of Ireland) for payment to any persons in the United Kingdom, shall extend to the tax to be assessed and charged under this rule.

(3) Any person who, if acting in relation to dividends chargeable under the aforesaid provisions of Schedule C would be deemed to be a person intrusted with the payment of such dividends, shall, if acting in relation to sums chargeable under this rule, be deemed to be a person intrusted with the payment thereof.

Schedule E.

Tax under Schedule E shall be charged in respect of every public office or employment of profit, and in respect of every annuity, pension, or stipend payable by the Crown or out of the public revenue of the United Kingdom, other than annuities charged under Schedule C, for every twenty shillings of the annual amount thereof.

RULES APPLICABLE TO SCHEDULE E.

1. Tax under this Schedule shall be annually charged on every person having or exercising an office or employment of profit mentioned in this Schedule, or to whom any annuity, pension, or stipend, as described in this Schedule, is payable, in respect of all salaries, fees, wages, perquisites or profits whatsoever therefrom for the year of assessment, except as otherwise provided, after deducting the amount of duties or other sums payable or chargeable on the same by virtue of any Act of Parliament, where the same have been really and bonâ fide paid and borne by the party to be charged.

2. Every assessment shall be made for one year, and the tax in respect thereof shall be levied for that year without any new assessment, notwithstanding any change in the holder of any office or employment; but if, during the year of assessment, any person chargeable quits the office or employment, or dies, he, or his executors or administrators, respectively, shall be liable for tax in respect of the period during which he held or exercised the office or employment, and any successor shall in like manner be liable in respect of the period during which he has held or exercised the same.

3. If an annuity, pension, or stipend ceases within the year of assessment, the assessment thereon shall be discharged as from the date of cessation.

4.—(1) Perquisites may be estimated either on the profits of the preceding year, or on the average for one year of the amount of the profits thereof in the three preceding years.

(2) In any such case the preceding year or years shall be taken to end on the fifth day of April, or on the day of each year on which the accounts of such profits have been usually made up.

(3) Perquisites shall be deemed to be such profits as arise in the course of exercising an office or employment from fees or other emoluments.

5. If at any time, either during the year of assessment or in respect of that year, a person becomes entitled to any additional salary, fees, or emoluments beyond the amount for which an assessment has been made upon him, or for which at the commencement of that year he was liable to be charged, an additional assessment shall, as often as the case may require, be made upon him in respect of any such additional salary, fees or emoluments, so that he may be charged in respect of the full amount of his salary, fees or emoluments for that year.

6. The tax shall be paid in respect of all the public offices and employments of profit within the United Kingdom or by the officers hereinafter respectively described, namely—

(a) offices belonging to either House of Parliament;

(b) offices belonging to any court of justice in the United Kingdom,

whether civil, criminal, ecclesiastical, naval, military, or air-force;

(c) public offices under the civil government of the Crown, or in any county palatine, or the Duchy of Cornwall;

(d) officers in His Majesty's navy;

(e) commissioned officers in His Majesty's military forces;

(f) commissioned officers in His Majesty's air force;

(g) offices or employments of profit under any ecclesiastical body;

(h) offices or employments of profit under any company or society, whether corporate or not corporate;

(i) offices or employments of profit under any public institution, or on any public foundation of whatever nature, or for whatever purpose established;

(j) offices or employments of profit under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls, or duties;

(k) all other public offices, or employments of profit which are of a public nature.

7.—(1) Tax in respect of offices and employments of profit held under a railway company shall be charged by the special commissioners, who shall notify to the secretary or other officer of the company the particulars of the assessments.

(2) Any such assessment shall be deemed to be and shall be an assessment upon the company, and the tax in respect thereof shall be paid, collected, and levied accordingly, and the company or the secretary or other officer may deduct out of the emoluments of the holder of any such office or employment of profit the tax so charged.

8. In estimating the tax payable, all official deductions and payments made on receipt of the emoluments of any office or employment of profit, or on receipt of any annuity, pension, or stipend, or on passing the accounts of the office, may be deducted if a due account thereof is rendered to the commissioners and proved to their satisfaction.

9. If the holder of an office or employment of profit is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to expend money wholly, exclusively, and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed.

10. Where the Treasury are satisfied with respect to any class of persons in receipt of any salary, fees, or emoluments payable out of the public revenue that such persons are obliged to lay out and expend money, wholly, exclusively, and necessarily in the performance of the duties in respect of which such salary, fees, or emoluments are payable,

the Treasury may fix such sum, as in their opinion represents a fair equivalent of the average annual amount laid out and expended as aforesaid by persons of that class, and in charging the tax on the said salary, fees, or emoluments, there shall be deducted from the amount thereof the sums so fixed by the Treasury:

Provided that if any person would, but for the provisions of this rule, be entitled to deduct a larger amount than the sum so fixed, that sum may be deducted instead of the sum so fixed.

11.—(1) Where any official pay is payable at a public office, or by any officer of the Royal household, or by a Crown receiver or paymaster, or by any agent employed in that behalf, the tax chargeable thereon shall be deducted out of the official pay, or out of any money which is payable on account of that official pay or any arrears thereof, and shall be applied in satisfaction of any such tax which has not been otherwise paid, and shall be paid to the Commissioners of Inland Revenue.

(2) If the tax payable is charged by the general commissioners in their respective divisions, they shall transmit an account of the amount of tax so charged to the office where the official pay is payable, in order that it may be there deducted.

(3) In this rule the expression " official pay " means any salary, fees, wages, perquisites, or other profits, or any annuity, pension, or stipend.

(4) Where an annuity or pension is payable out of any particular branch of the public revenue at the office of that branch, the commissioners acting for that department may charge the tax in respect of the same as if the annuity or pension were salary or wages payable thereout.

12. Where any emoluments chargeable under this Schedule do not arise as described in the last preceding rule, but arise from any other office or employment of profit, and are payable by any officer, receiver, or agent, any tax chargeable in respect thereof which has not been otherwise paid shall be deducted therefrom or from the arrears thereof and paid to the proper officer.

13.—(1) If either—

(i) the tax in respect of any office or employment of profit cannot be deducted in the hands of the appropriate officer or of an agent for payment of the emoluments thereof; or

(ii) the said emoluments have been paid over to the person entitled to them;

and the person charged neglects or refuses to pay the tax, the commissioners for the offices concerned may, by writing under their hands and seals, certify the neglect or refusal, and the sum payable, to the general commissioners for the division comprising the parish in which the person charged resides.

(2) The said last-mentioned commissioners on receipt of the certificate shall, by warrant under their hands and seals, empower the respective collectors of the said tax under this Schedule, or the collectors of the

parish where the person chargeable resides, to levy the tax in the same manner and with the like powers as other tax is leviable by them under this Act.

(3) The collectors shall execute the warrant in the manner prescribed by this Act and as if the person chargeable had been charged with tax in the parish where he resides, and the moneys recovered shall be paid over to the proper officer.

14.—(1) If an office or employment of profit chargeable under this Schedule is executed by deputy, the deputy, if he is receipt of the profits thereof, shall pay the tax charged thereon, and deduct it out of the profits of the office or employment.

(2) If the profits of any officer or officers are received by any other officer on his or their behalf, or as a fund to be divided among such officers, the officer receiving the same shall pay the tax charged thereon and deduct it out of the sums received before they are handed over or divided.

(3) In the case of non-payment of the tax, the said deputy or officer receiving the profits shall be liable to such distress as is prescribed by this Act against any person holding the office or employment, and to any other remedy and penalty herein provided.

15. Where deduction of tax is authorised to be made out of any sums, the deduction shall be made at such times in each year as the said sums are payable.

16. If any emoluments of any office or employment of profit, or any annuity, pension, or stipend charged under this Schedule are charged with a sum payable to another person, such portion of the tax shall be deducted from that sum as the tax thereon would amount unto, and that person, or any agent or receiver on his behalf, shall allow the deduction on receipt of the residue of the sum payable.

17. If a deputy, clerk, or other person is employed under the holder of an office or employment of profit, and his salary or wages are paid out of the emoluments thereof, the holder of the office may deduct out of the salary or wages payable by him such a portion of the tax charged on the emoluments of the office or employment as the tax on the said salary or wages would amount unto, and the deduction shall be allowed upon receipt of the residue of the salary or wages.

18.—(1) The tax shall be assessed and charged by the respective commissioners for all the offices in each department, in the place where the said commissioners execute their offices, although certain of the offices in the same department may be executed elsewhere.

(2) A person chargeable in respect of an office or employment of profit shall be deemed to exercise it at the head office of the department under which it is held, and shall be assessed and charged at that head office, although the duties of the office or employment are performed, or any profits thereof are payable elsewhere, whether within the United Kingdom or not.

(3) An office shall be deemed to belong to, and shall be charged by or

under the principal officers of the department by or under whom the appointment to the office is made, but if the appointment is made by an inferior officer of the department, such office shall be charged by the commissioners by whom that inferior officer is chargeable in respect of his own office:

Provided that an officer who holds an appointment under the Great Seal or Privy Seal of England or Scotland, or an appointment under the Royal Sign Manual, or an appointment under the Treasury but not exercised in the Treasury, shall be assessed and charged in that department in which his office is exercised.

(4) Nothing in this rule shall limit the right given by this Act to any other commissioners to assess and charge offices within their jurisdiction, although those offices may not be held under their appointment, or although the profits thereof may not be payable by them or by their order.

(5) Notwithstanding anything in this rule, a person may be assessed and charged under this Schedule by the commissioners acting for any parish in which he ordinarily resides.

THE GENERAL RULES (*g*).

General Rules applicable to Schedules A, B, C, D and E.

1. Every body of persons shall be chargeable to tax in like manner as any person is chargeable under the provisions of this Act.

2.—(1) In assessing the tax chargeable under any Schedule upon a clergyman or minister of any religious denomination, the following deductions may be made from any profits, fees or emoluments of his profession or vocation—

(a) any sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty as a clergyman or minister;

(b) such part of the rent (not exceeding one-eighth), as the commissioners by whom the assessment is made may allow, paid by him in respect of a dwelling-house any part of which is used mainly and substantially for the purposes of his duty as such clergyman or minister;

and where any such clergyman or minister is in the occupation of a dwelling-house, but pays no rent therefor, he shall for the purposes of the foregoing provision be deemed to pay a rent equal to the annual value of the dwelling-house as assessed to tax under Schedule A.

(2) If no such deduction has been made, a proportionate part of the tax paid by him shall be repaid to the clergyman or minister on proof to the commissioners that any sum has been expended as aforesaid.

3. Every British subject whose ordinary residence has been in the United Kingdom shall be assessed and charged to tax, notwithstanding

(*g*) See Finance Act, 1919, s. 28.

that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad, and shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity, or stipend (save as herein is excepted), or from any trade, profession, employment, or vocation in the United Kingdom or elsewhere.

4. The trustee, guardian, tutor, curator, or committee of any incapacitated person having the direction, control, or management of the property or concern of any such person, whether such person resides in the United Kingdom or not, shall be assessable and chargeable to tax in like manner and to the like amount as that person would be assessed and charged if he were not an incapacitated person.

5. A person not resident in the United Kingdom, whether a British subject or not, shall be assessable and chargeable in the name of any such trustee, guardian, tutor, curator, or committee, or of any factor, agent, receiver, branch, or manager, whether such factor, agent, receiver, branch, or manager has the receipt of the profits or gains or not, in like manner and to the like amount as such non-resident person would be assessed and charged if he were resident in the United Kingdom and in the actual receipt of such profits or gains.

6. A non-resident person shall be assessable and chargeable in respect of any profits or gains arising, whether directly or indirectly, through or from any factorship, agency, receivership, branch, or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch, or manager.

7. Where a non-resident person, not being a British subject or a British, Indian, Dominion, or Colonial firm or company, or branch thereof, carries on business with a resident person, and it appears to the commissioners by whom the assessment is made that, owing to the close connection between the resident person and the non-resident person, and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

8. Where it appears to the commissioners by whom the assessment is made or, on any objection or appeal, to the general or special commissioners, that the true amount of the profits or gains of any non-resident person chargeable with tax in the name of a resident person cannot in any case be readily ascertained, the commissioners may, if they think fit, assess and charge the non-resident person on a percentage of the

turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid, and in such case the provisions of this Act relating to the delivery of statements by persons acting on behalf of others shall extend so as to require returns to be given by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as statements are to be delivered by persons acting for incapacitated or non-resident persons of profits or gains to be charged.

9.—(1) The amount of percentage under the last preceding rule shall in each case be determined, having regard to the nature of the business, by the commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the additional commissioners, to objection or appeal to the general or special commissioners.

(2) If either the resident person or non-resident person is dissatisfied with the percentage determined either in the first instance or by the general or special commissioners on objection or appeal, he may, within four months of that determination, require the commissioners to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Treasury, and the decision of the referee or board shall be final and conclusive.

10. Nothing in these rules shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent not being an authorised person carrying on the regular agency of the non-resident person or a person chargeable as if he were an agent in pursuance of these rules, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

11. The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of these rules in the name of a resident person shall not of itself make him chargeable in respect of profits arising from those sales or transactions.

12. Where a non-resident person is chargeable to income tax in the name of any branch, manager, agent, factor or receiver in respect of any profits or gains arising from the sale of goods or produce manufactured or produced out of the United Kingdom by the non-resident person, the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the commissioners by whom the assessment is made, or in case of an appeal to the general or special commissioners, to have the assessment to income tax in respect of those profits or gains made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and on proof to the satisfaction of the commissioners concerned of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

13. The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done under this Act for the purpose of assessment and payment of tax.

14. Any person who has been charged under this Act in respect of any incapacitated or non-resident person as aforesaid may retain, out of money coming into his hands on behalf of any such person, so much thereof from time to time as is sufficient to pay the tax charged, and shall be indemnified for all such payments made in pursuance of this Act.

15.—(1) A receiver appointed by any court in the United Kingdom which has the direction and control of any property in respect of which tax is charged in accordance with the provisions of this Act shall be assessable and chargeable with tax in like manner and to the like amount as would be assessed and charged if the property were not under the direction and control of the court.

(2) Every such receiver shall be answerable for doing all matters and things required to be done under this Act for the purpose of assessment and payment of tax.

16. A married woman acting as a sole trader, or being entitled to any property or profits to her separate use, shall be assessable and chargeable to tax as if she were sole and unmarried:

Provided that—

(1) the profits of a married woman living with her husband shall be deemed the profits of the husband, and shall be assessed and charged in his name, and not in her name or the name of her trustee; and

(2) a married woman living in the United Kingdom separate from her husband, whether the husband be temporarily absent from her or from the United Kingdom or otherwise, who receives any allowance or remittance from property out of the United Kingdom, shall be assessed and charged as a feme sole if entitled thereto in her own right, and as the agent of the husband if she receives the same from or through him, or from his property, or on his credit.

17.—(1) If an application is made for the purpose in such manner and form as may be prescribed by the Commissioners of Inland Revenue, either by a husband or wife, within six months before the *sixth day of July* (*h*) in any year of assessment, income tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married, and all the provisions of this Act with respect to the assessment, charge, and recovery of tax, and the penalties for failure to deliver a statement of profits or gains, shall, save as otherwise provided by this Act, apply as if they were not married.

(*h*) Words substituted, Finance Act, 1919, s. 26.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this rule to be made at any time, and the provisions of this Act relating to penalties for neglect or refusal to deliver, or for delay in delivering true and correct statements of profits or gains, shall, with the necessary modifications, apply in the case of the neglect or refusal to make, or wilful delay in making, any such return.

18. Where any person dies without having delivered a statement of all his profits or gains chargeable to tax with a view to an assessment thereon in due course, an assessment in respect of the profits or gains which arose or accrued to him before his death may be made at any time within the year of assessment, or within three years after the expiration thereof, upon his executors or administrators, and the amount of the tax thereon shall be a debt due from and payable out of his estate.

19.—(1) Where any yearly interest of money, annuity, or any other annual payment (whether payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether payable half-yearly or at any shorter or more distant periods), is payable wholly out of profits or gains brought into charge to tax, no assessment shall be made upon the person entitled to such interest, annuity, or annual payment, but the whole of those profits or gains shall be assessed and charged with tax on the person liable to the interest, annuity, or annual payment, without distinguishing the same, and the person liable to make such payment, whether out of the profits or gains charged with tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled, on making such payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the said payment was accruing due.

The person to whom such payment is made shall allow such deduction upon the receipt of the residue of the same, and the person making such deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid.

(2) Where any royalty, or other sum, is paid in respect of the user of a patent, wholly out of profits or gains brought into charge to tax, the person paying the royalty or sum shall be entitled, on making the payment, to deduct and retain thereout a sum representing the amount of the tax thereon at the rate or rates of tax in force during the period through which the royalty or sum was accruing due.

20. The profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and the body of persons paying such dividend shall be entitled to deduct the tax appropriate thereto.

21.—(1) Upon payment of any interest of money, annuity, or other annual payment charged with tax under Schedule D, or of any royalty or

other sum paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of the payment.

(2) Any such person shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest, annuity, annual payment, royalty, or other sum respectively, as is not paid out of profits or gains brought into charge, as the case may be, and every such amount shall be a debt from him to the Crown and shall be recoverable as such: and the provisions contained in section two of the Stamp Duties Management Act, 1891, in relation to money in the hands of any person for stamp duty, shall apply to money deducted by any such person in respect of tax.

(3) The amount of annuities which an assurance company carrying on the business of ganting annuities is entitled, for the purposes of this rule, to treat as having been paid out of profits or gains brought into charge to tax, shall not exceed the amount of the taxed income of its annuity fund.

22.—(1) If a difference arises—

(a) between tenant and landlord or any other persons with regard to the deduction on account of tax to be made from any annual sum; or

(b) between the occupier for the time being and any former occupier of lands, tenements, hereditaments or heritages, his executors, administrators, or assigns, with regard to the proportion of tax to be paid or allowed by either of them respectively;

the general commissioners of the division shall settle the proportion of the payments or deductions to be made according to the provisions of this Act, and, in default of payment, shall levy the same as if the proportions settled by them had been charged upon the respective persons, and shall pay over the same to the collector or to the proper person, as the case may require.

(2) In any such case the determination of the general commissioners shall be final.

(3) In this rule "annual sum" means any interest, annuity, rent, rentcharge, fee-farm rent, rent-service, quitrent, feu duty, or other rent or annual payment.

23.—(1) A person who refuses to allow a deduction of tax authorised by this Act to be made out of any payment, shall forfeit the sum of fifty pounds.

(2) Every agreement for payment of interest, rent, or other annual payment in full without allowing any such deduction shall be void.

SECOND SCHEDULE.

General Commissioners for certain Cities and Towns.

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THIRD SCHEDULE.

Qualifications of General Commissioners.

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FOURTH SCHEDULE.

Declarations.

Form of Declaration to be made by General, Additional and Special Commissioners, acting in respect of Tax under Schedule D.

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Forms of Declaration to be made by Surveyors, Assessors, Collectors, Clerks to Commissioners.

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FIFTH SCHEDULE.

Statements, Lists, and Declarations.

I.—By every Occupier of Lands, Tenements, Hereditaments or Heritages to be charged under Schedules A and B, or either of them.

A statement of the rent and annual value, or the annual value, as the case shall require, of all lands, tenements, hereditaments, or heritages, occupied in every parish, distinguishing the proportions in each parish, and estimating separately such as are occupied as owner or tenant, and also such as are held under different landlords, and also such as are chargeable by reference to the rent or annual value, or on the amount of profits; and also estimating separately the rent or annual value chargeable in respect of the property, and the amount chargeable in respect of the occupation, distinguishing the same as follows:—

Lands and tenements occupied as owner;

Lands and tenements let at rackrent within seven years;

Lands and tenements let at rackrent before the period of seven years, with the rent and annual value thereof estimated separately;

Lands and tenements let, but not at rackrent, with the rent and annual value thereof estimated separately;

The amount at which such land and tenements are rated to the poor;

The amount of any composition, rent, rentcharge, or annual payment paid in the preceding year to the rector or vicar or other person, for tithes of the above lands and tenements;

The amount of each deduction claimed in respect thereof, and stating if tithe-free, in part or in the whole, and the amount of any modus for tithes or real composition.

II.—By every Lay Impropriator, and every Ecclesiastical Rector, Vicar, or other Person (describing himself) receiving any Tithes in kind, or any Payments in Right of the Church, or by Endowment, or in Lieu of any Tithes, or any Teinds in Scotland, to be charged under Schedule A.

The amount of the profits from tithes taken in kind for one year, on an average of the three preceding years;

The amount of dues and money payable in right of the Church, or by endowment, or in lieu of tithes not arising from lands, on the above average;

The amount of compositions, rents, and payments in lieu of tithes, arising from lands, for the preceding year.

III.—By every Person carrying on any concern hereinafter mentioned, or his Agent or Officer, in the cases authorised to be charged under Schedule A.

The amount of profits—

of quarries of stone, slate, limestone, or chalk in the preceding year;

of ironworks, gasworks, salt springs or works, alum mines or works, water works, streams of water, canals, inland navigations, docks, drains, levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges and ferries, and other concerns of a like nature, in the preceding year;

of mines of coal, tin, lead, copper, mundic, iron, and other mines, on an average of the five preceding years.

IV.—By every Lord of a Manor or other Royalty, or Tenant of the same.

The amount of all dues and other services or other casual profits (except rents and annual payments) of such manors or royalties, on an average of the seven preceding years.

V.—By the Receiver of any Fine paid in consideration of a demise of Lands or Tenements (except customary) to be charged under Schedule A.

The amount of such fines in the preceding year, or for such lesser period since the interest therein commenced, and an estimate of the average value for one year.

VI.—By every Person entitled to Profits arising from Lands, Tenements, Hereditaments or Heritages, not before stated, to be charged under Schedule A.

The amount, on a fair average, to be allowed by the respective commissioners.

VII.—By or for every PERSON carrying on any TRADE to be charged under Schedule D.

The amount of the profits or gains thereof, upon a fair and just average of the three preceding years, or of such shorter period as the trade has been carried on.

VIII.—By every PERSON (other than a Weekly Wage-earner, who is to be assessed and charged quarterly) exercising any PROFESSION, EMPLOYMENT, or VOCATION, to be charged under Schedule D.

The amount of the profits, gains and emoluments thereof, upon a fair and just average of the three preceding years, or of such shorter period as the profession, employment or vocation has been exercised.

IX.—By every PERSON entitled to PROFITS of an UNCERTAIN VALUE not before stated, or any INTEREST, ANNUITY, ANNUAL PAYMENT, DISCOUNT or DIVIDEND, to be charged under Schedule D.

The full amount of the profits or gains arising therefrom within the preceding year.

X.—By every PERSON entitled to or receiving INCOME from SECURITIES out of the United Kingdom to be charged under Schedule D.

(1) The full amount, as far as the same can be computed, arising in the year of assessment, and the amount of every deduction or allowance claimed in respect thereof, together with the particulars of such deduction and the grounds for claiming such allowance; or

(2) in the case of any such person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom or that, being a British subject, he is not ordinarily resident in the United Kingdom, or, in the case of income arising from any such securities as aforesaid which form part of the investments of the foreign life assurance fund of an assurance company, the full amount, so far as the same can be computed, of the sums which have been, or will be, received in the United Kingdom, in the year of assessment, without any deduction or abatement.

XI.—By every PERSON entitled to or receiving INCOME from POSSESSIONS out of the UNITED KINGDOM to be charged under Schedule D.

(1) In the case of income from stocks, shares or rents, save as hereinafter mentioned, the full amount arising therefrom, on an average of the three preceding years, and the amount of every deduction or allowance claimed in respect thereof, together with the particulars of such deduction and the grounds for claiming such allowance.

(2)—

(a) In the case of income received from such possessions other than stocks, shares or rents; or

(b) in the case of income from stocks, shares or rents, where the person entitled to or receiving the same satisfies the Commis-

sioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom, or where such income arises from any such possessions as aforesaid which form part of the foreign life assurance fund of an assurance company;

the full amount of the actual sums annually received in the United Kingdom, either from remittances, or importation of property, or money or value from property not imported, or on credit, or on account, in respect of remittances, property, money or value, on an average of the three preceding years.

XII.—By every Person entitled to any Annual Profits or Gains not falling under any of the foregoing Rules, and not charged by any of the other Schedules, to be charged under Schedule D.

The full amount thereof received annually, or according to the average directed to be taken by the commissioners on a statement of the nature of such profits or gains, and the grounds on which the amount has been computed, and the average taken, to the best of the knowledge and belief of such person.

XIII.—Declarations to be delivered by Partners in respect of the Tax to be charged under Schedule D.

First. Declaration by the precedent acting partner, or by the agent, if none of the partners are resident in the United Kingdom, of the names of the several partners, their respective residences, and the place of carrying on the trade or exercising the profession, and the style or description of the firm.

Second. Declaration by any partner, not being the precedent acting partner, of his being assessed with the firm, describing the same, and the place where the statement of the precedent partner was delivered.

XIV.—Statement of Profits of any Public Office, or Employment of Profit, to be charged under Schedule E.

The amount of the salary, fees, wages, perquisites, and profits of the year of assessment or of the preceding year, or on an average of the three preceding years, as the case shall require.

XV.—General Declaration by each Person returning a Statement of Profits or Gains to be charged under Schedules A, B, D, or E.

Declaring the truth thereof, and that the same is fully stated on every description of property, or profits or gains, included in the Act relating to the said tax, and appertaining to such person, estimated to the best of his judgment and belief, according to the provisions of this Act.

XVI.—Lists and Declarations for facilitating the Execution of the Act in Relation to the Tax chargeable on others.

First. List containing the name of every lodger or inmate resident in any dwelling-house, with the ordinary place of residence of every lodger or inmate who has any ordinary place of residence elsewhere at which he can be, and is desirous of being, assessed.

Second. List containing the name and place of residence of every person in any service or employ, and the payments made to every such person in respect of the service or employment.

Third. List to be delivered by every person chargeable on behalf of another person, and by any person whomsoever who, in whatever capacity, is in receipt of any money or value, or of profits or gains, of or belonging to any other person, describing the person for whom he acts, and stating his name and address, and the amount of such money, value, profits or gains, and declaring whether such person is of full age, or a married woman living with her husband, or a married woman whose husband is not accountable for the payment of any tax charged on her, or is resident in the United Kingdom, or is an incapacitated person. The person delivering such list shall also deliver a list containing the names and addresses of any other person or persons acting jointly with him.

Fourth. Declaration on whom the tax is chargeable in respect of any such money, value, profits or gains.

Fifth. List containing the proper description of every body of persons, or trust, for which any person is answerable under this Act; and where any such person is answerable under this Act for the tax to be charged in respect of the property or profits or gains of other persons, he shall deliver such lists as aforesaid, together with the required statements of such profits or gains.

XVII.—Lists, Declarations, and Statements to be delivered in order to obtain any *allowance or deduction* (*i*).

First. Declaration of the amount of value of property or profits or gains returned, or for which the claimant has been, or is liable to be, assessed.

Second. Declaration of the amount of rents, interests, annuities, or other annual payments, in respect of which the claimant is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third. Declaration of the amount of interest, annuities, or other annual payments to be made out of the property or profits or gains assessed on the claimant, distinguishing each source.

Fourth. Statement of the amount of income derived according to the three preceding declarations.

Fifth. Statement of any tax which the claimant may be entitled to deduct, retain or charge against any other person.

(*i*) Reference substituted, Finance Act, 1920, s. 32, and Third Sched.

SIXTH SCHEDULE.

FORMS.

NOTE.—These forms may be varied or other forms prescribed by the Commissioners of Inland Revenue as circumstances require.]

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SEVENTH SCHEDULE.

ENACTMENTS REPEALED.

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THE FINANCE ACT, 1919.

(9 & 10 GEO. 5, c. 32.)

[31st July, 1919.]

PART II.—INCOME TAX.

14.—(1) Income tax for the year 1919-20 shall be charged at the rate of six shillings, and the rates of super-tax for the purposes of section four of the Income Tax Act, 1918, and the rates of tax for the purposes of sections fourteen and fifteen of that Act (which relate respectively to relief in respect of earned income where the income does not exceed two thousand five hundred pounds, and relief in respect of unearned income where the income does not exceed two thousand pounds), shall be the same for that year as for the year 1918-19.

(2) The annual value of any property which has been adopted for the purpose either of income tax under Schedules A and B, or of inhabited house duty, for the year 1918-19, shall be taken as the annual value of that property for the same purpose for the year 1919-20; provided that this subsection—

(a) so far as respects the duty on inhabited houses in Scotland, shall be construed by reference to a year of assessment ending on the twenty-fourth day of May instead of on the fifth day of April; and

(b) shall not apply to lands, tenements, and hereditaments in the administrative county of London, with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is, by that Act, made conclusive for the purposes of income tax and inhabited house duty.

15. The following sections of the Income Tax Act, 1918, are hereby continued in force as respects the year 1919-20, that is to say:—

Section of Act.	Subject Matter.
42	Reduced rates of tax and other relief applicable to the service pay of sailors, soldiers and others.
43	Relief in respect of diminution of profits or gains due to the war.
44	Relief where income of year falls short of assessed income by more than ten per cent.
50	Provision for postponement of payment of super-tax where income has diminished.
55	Relief in respect of colonial income tax.

16.—(1) Income from wounds and disability pensions to which this section applies shall be exempt from income tax (including super-tax) and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts, for the year 1918-19, or any succeeding year of assessment.

(2) This section applies to—

(a) wounds pensions granted to members of the naval, military, or air forces of the Crown;

(b) retired pay of disabled officers granted on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(c) disablement or disability pensions granted to members, other than commissioned officers, of the naval, military, or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(d) disablement pensions granted to persons who have been employed in the nursing services of any of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air-force service;

(e) injury and disablement pensions payable under any scheme made under the Injuries in War (Compensation) Act, 1914, the Injuries in War Compensation Act, 1914 (Session 2), and the Injuries in War (Compensation) Act, 1915, or under any War Risks Compensation Scheme for the Mercantile Marine:

Provided that, where the amount of any retired pay or pension to which this section applies is not solely attributable to disablement or disability, the relief conferred by this section shall extend only to such part as is certified by the Minister of Pensions, after consultation with the appropriate Government Department, to be attributable to disablement or disability.

(3) If any person has paid income tax or super-tax of an amount

exceeding that which he would have been liable to pay if this section had been in force, he shall, on proof of the facts to the satisfaction of the Commissioners having jurisdiction in the matter, be entitled to repayment of the excess.

17.—(1) War gratuities to which this section applies shall be exempt and shall be deemed to have been exempt since the fourth day of August nineteen hundred and fourteen, from income tax (including super-tax), and shall not be reckoned in computing income for any of the purposes of the Income Tax Acts.

(2) This section applies to gratuities paid in respect of service in connection with the present war to members of any of the naval, military, or air forces of the Crown, or to persons who have been employed in the nursing services of any of those forces; and benefits on demobilisation paid to officers and members of Queen Mary's Auxiliary Army Corps, the Women's Royal Naval Service and the Women's Royal Air Force; and demobilisation payments to employees of the Joint War Committee of the British Red Cross Society and the Order of St. John of Jerusalem in England.

(3) If any person has paid income tax or super-tax of an amount exceeding that which he would have been liable to pay if this section had been in force, he shall, on proof of the facts to the satisfaction of the Commissioners having jurisdiction in the matter, be entitled to repayment of the excess notwithstanding anything in section forty-one of the Income Tax Act, 1918.

18.—(1) In estimating the amount of annual profits or gains arising or accruing from any trade the profits of which are chargeable to tax under Case I. of Schedule D, there shall, notwithstanding anything in Rule 5 of the rules applicable to Cases I. and II. of Schedule D, be allowed to be deducted, as expenses incurred in any year, on account of any mills, factories, or similar premises owned by the person carrying on such trade and occupied by him for the purposes of the said trade, and situate outside the United Kingdom, a deduction equal to one-sixth of the annual value of those premises.

(2) In estimating the profits for any year of any of the concerns enumerated in Rules 1, 2, and 3 of No. III. of the rules applicable to Schedule A, there shall be allowed to be deducted, as expenses incurred in any year, on account of any mills, factories, or similar premises owned by the person carrying on the concern and occupied by him for the purposes of such concern, a deduction equal to one-sixth of the annual value of those premises.

(3) Annual value for the purposes of this section shall be estimated according to the principles governing the estimation of the annual value for the purposes of Schedule A of mills, factories and similar premises in the United Kingdom.

19. The houses to which Rule 8 of No. V. in Schedule A (which confers

relief in certain cases in respect of the cost of maintenance, repairs, insurance, and management of houses) applies, shall be any house the annual value of which, as adopted under Schedule A, does not exceed—

(a) where the house is situate in the Metropolitan police district, including the City of London, *one hundred and five* (*a*) pounds;

(b) where the house is situate in Scotland, *ninety* (*a*) pounds; and

(c) where the house is situate elsewhere, *seventy-eight* (*a*) pounds;

and subsection (3) of the said Rule 8 shall be amended accordingly:

Provided that no repayment of tax shall be made under the said Rule 8 in respect of the cost of maintenance, repairs, insurance, or management, if or to such extent as the said cost has been otherwise allowed as a deduction in computing income for the purposes of income tax.

20. (*Extension of relief in respect of colonial income tax*) (*b*).

21. (*Extension of relief in respect of children, &c.*) (*c*).

22. Where a clergyman or minister of any religious denomination occupies a dwelling house rent free by virtue of his office in such circumstances that the annual value of the house does not fall to be regarded as part of his income, he shall be entitled, on giving notice to the surveyor of taxes not later than the thirtieth day of September in any year, or, where the occupation of such clergyman or minister commenced after the thirtieth day of June, before the expiration of three months after the date of the commencement of such occupation, to require that the annual value of the house, after deducting therefrom the amount of any annual sum payable in respect of such house, shall for all purposes of income tax for that year be treated as earned income of such clergyman or minister.

In this section the expression "annual sum" has the same meaning as in Rule 4 (2) of No. VIII. of the rules applicable to Schedule A.

23. (*Amendment of s. 26 of 8 & 9 Geo. 5, c. 40*) (*d*).

24. Subsection (2) of section forty-seven of the Income Tax Act, 1918 (which provides for relief from income tax in the case of certain war savings certificates), shall have effect as though "any Act" were substituted for "section forty-one of the Finance Act, 1918."

25. Where the income which any individual is required under the Income Tax Acts to include in a statement of his total income from all sources for the purposes of income tax or super-tax for any year includes both (*e*)—

(i) interest received without deduction of income tax in respect of securities (in this section referred to as "original securities")

(*a*) Words substituted by Finance Act, 1920, s. 29.

(*b*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.; see sect. 27.

(*c*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.; see sect. 21.

(*d*) Repealed, Finance Act, 1920, s. 64 (3), and Fourth Sched.

(*e*) Extended, Finance Act, 1920, s. 30.

which have been accepted as the equivalent of cash in payment for fully-paid allotments of Four Pounds per Cent. Victory Bonds or Four Pounds per Cent. Funding Loan, 1960-90 (in this section referred to as "substituted securities"); and

(ii) interest taxed by deduction in respect of such substituted securities;

and the amount of the interest so included exceeds the full amount of the interest for a complete year on the original securities; then, if that individual so requires, the excess—

(a) shall not be taken into account in ascertaining the total income from all sources of that individual for that year for the purposes of income tax or super-tax; but

(b) shall nevertheless be chargeable to income tax or super-tax for that year at such rate or rates and subject to such reliefs, if any, as would be applicable if such excess constituted the highest part of an income equal in amount to the amount of the total income of that individual exclusive of such excess.

26. The sixth day of July shall be substituted for the sixth day of May in section eight of the Income Tax Act, 1918, and in rule seventeen of the general rules as the date before which an application for separate assessment of husband and wife must be made under those provisions; and an application for the purposes of those provisions may, in the case of persons marrying during the course of a year of assessment be made as regards that year at any time before the sixth day of July in the following year; and those provisions shall have effect accordingly.

27. (*Extension of relief in respect of wife and other relatives*) (*f*).

28. In this Part of this Act, and in any subsequent enactment relating to income tax, except where otherwise expressly provided—

References to Schedule A, B, C, D, or E (respectively) shall be construed as references to those Schedules in the Income Tax Act, 1918, as amended by any subsequent enactment;

The expression "the general rules" means the general rules applicable to Schedules A, B, C, D, and E, set out in the First Schedule to the Income Tax Act, 1918, as amended by any subsequent enactment;

The expression "the year 1919-20" means the year of assessment beginning on the sixth day of April nineteen hundred and nineteen, and any corresponding expression in which two years are similarly mentioned means the year of assessment beginning on the sixth day of April in the first mentioned of those years;

The expression "earned income" has the meaning assigned to it in section fourteen of the Income Tax Act, 1918 (*g*);

(*f*) Repealed, *ibid.*, sect. 64 (3), and Fourth Sched.; see sects. 18—20.

(*g*) Extended, Finance Act, 1920, s. 33.

The expression "the Income Tax Acts" means the Income Tax Act, 1918, and any other enactments relating to income tax.

PART V.—GENERAL.

. . . . .

38. (1) . . . . .

Part II. of this Act shall be construed together with the Income Tax Acts.

. . . . .

(2) This Act may be cited as the Finance Act, 1919.

(3) The Acts set out in the Fourth Schedule of this Act are hereby repealed to the extent mentioned in the third column of that schedule.

THE FINANCE ACT, 1920.

(10 & 11 GEO. 5, c. 18.)

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and the National Debt, and to make further provision in connection with Finance. [4th August 1920.]

. . . . .

PART II.—INCOME TAX.

14.—(1) Income tax for the year 1920-21 shall be charged at the rate of six shillings.

(2) All such enactments relating to income tax as were in force with respect to duties of income tax granted for the year 1919-20 shall have full force and effect with respect to any duties of income tax granted by this Act.

(3) The annual value of any property which has been adopted for the purpose either of income tax under Schedules A and B, or of inhabited house duty, for the year 1919-20, shall be taken as the annual value of that property for the same purpose for the year 1920-21; provided that this sub-section—

(a) so far as respects the duty on inhabited houses in Scotland, shall be construed by reference to a year of assessment ending on the twenty-fourth day of May instead of on the fifth day of April; and

(b) shall not apply to lands, tenements, and hereditaments in the administrative county of London with respect to which the valuation list under the Valuation (Metropolis) Act, 1869, is, by that Act, made conclusive for the purposes of income tax and inhabited house duty.

15.—(1) Super-tax shall be charged in respect of the income of any individual the total of which from all sources exceeds two thousand pounds, and Part II. of the Income Tax Act, 1918, shall have effect accordingly.

(2) The rates of super-tax for the year 1920-21 shall, for the purposes of section four of the Income Tax Act, 1918, as amended by this Act, be as follows:—

In respect of the first two thousand pounds of the income	Nil.
In respect of the excess over two thousand pounds—	
For every pound of the first five hundred pounds of the excess	One shilling and sixpence.
For every pound of the next five hundred pounds of the excess	Two shillings.
For every pound of the next one thousand pounds of the excess	Two shillings and sixpence.
For every pound of the next one thousand pounds of the excess	Three shillings.
For every pound of the next one thousand pounds of the excess	Three shillings and sixpence.
For every pound of the next one thousand pounds of the excess	Four shillings.
For every pound of the next one thousand pounds of the excess	Four shillings and sixpence.
For every pound of the next twelve thousand pounds of the excess	Five shillings.
For every pound of the next ten thousand pounds of the excess	Five shillings and sixpence.
For every pound of the remainder of the excess	Six shillings.

(3) All such enactments relating to super-tax as were in force with respect to the super-tax granted for the year 1919-20 shall have full force and effect with respect to the super-tax granted under this section.

(4) In estimating the total income of any individual for the purpose of super-tax, the amount of any earned income shall be taken to be the full amount of that income without the deduction of any allowance under this Part of this Act, and section five of the Income Tax Act, 1918, shall have effect accordingly.

16. For the purpose of ascertaining the amount of the assessable income of an individual for the purpose of income tax, there shall be allowed in the case of earned income a deduction from the amount of that income as estimated in accordance with the provisions of the Income

Tax Acts of a sum equal to one-tenth of the amount of that income, but not exceeding in the case of any individual two hundred pounds.

17.—(1) An individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf and who makes a return in the prescribed form of his total income shall be entitled for the purpose of ascertaining the amount of the income on which he is to be charged to income tax (in this Act referred to as "the taxable income") to have such deductions as are specified in the five sections of this Act next following made from his assessable income.

(2) The provisions of sections twenty-seven, twenty-eight, twenty-nine, and thirty of the Income Tax Act, 1918, and of paragraph XVII. of the Fifth Schedule to that Act, shall apply for the purpose of claims for any such deductions as aforesaid as if those provisions were re-enacted in this Act and in terms made applicable to such claims.

18.—(1) The claimant, if he proves that for the year of assessment he has his wife living with him, or that his wife is wholly maintained by him during the year of assessment, and that he is not entitled in computing the amount of his income for that year for the purposes of the Income Tax Acts to make any deduction in respect of the sums paid for the maintenance of his wife, shall be entitled to a deduction of two hundred and twenty-five pounds, and in any other case to a deduction of one hundred and thirty-five pounds.

(2) If the total income of the claimant includes any earned income of his wife the deduction to be allowed under this section shall be increased by an amount equal to nine-tenths of the amount of that earned income but not exceeding in any case forty-five pounds.

19.—(1) If the claimant proves that he is a widower and that for the year of assessment a person being a female relative of his or of his deceased wife is resident with him for the purpose of having the charge and care of any child of his, or he proves that he has no female relative of his own or of his deceased wife who is able or willing to take such charge and that he has employed some other female person to undertake the same, he shall, subject as hereinafter provided, be entitled to a deduction of forty-five pounds in respect of that female relative or other female person:

Provided that—

(a) no deduction shall be allowed under this section unless the claimant proves that no other individual is entitled to a deduction in respect of the female relative under the provisions of this Part of this Act or, if any other individual is so entitled, that the other individual has relinquished his claim thereto; and

(b) no deduction shall be allowed under this section where the female relative is a married woman living with her husband, and the husband has claimed and been allowed a deduction of two hundred and twenty-five pounds under the preceding provisions of this Part of this Act.

(2) In this section the expression "child" means a child in respect of whom a deduction is allowed under this Part of this Act.

(3) This section shall apply to a claimant being a widow as it applies to a claimant being a widower, with the substitution of "her deceased husband" for "his deceased wife."

20. If the claimant proves—

(a) that he is unmarried and that he has living with him either his mother, being a widow or a person living apart from her husband, or some other female relative, for the purpose of having the charge and care of any brother or sister of his, being a child in respect of whom a deduction is allowed under this Part of this Act, and that he maintains the mother or other relative at his own expense; and

(b) that neither he nor any other individual is entitled to a deduction in respect of the same person under any of the other provisions of this Part of this Act, or if any other individual is entitled to any such deduction that the other individual has relinquished his claim thereto,

he shall be entitled to a deduction of forty-five pounds.

21.—(1) If the claimant proves that he has living at the commencement of the year of assessment any child who is either under the age of sixteen years or who, if over the age of sixteen years at the commencement of that year, is receiving full time instruction at any university, college, school, or other educational establishment, he shall, subject to the provisions of this section, be entitled in respect of one child to a deduction of thirty-six pounds and in respect of each subsequent child to a deduction of twenty-seven pounds.

The expression "child" in this provision includes a step-child and an illegitimate child whose parents have married each other after his birth.

(2) If the claimant proves that for the year of assessment he has the custody of and maintains at his own expense any child who is under the age of sixteen years at the commencement of that year, or who, if over the age of sixteen years at the commencement of that year, is receiving such full-time instruction as aforesaid, and that neither he nor any other individual is entitled to a deduction in respect of the same child under the foregoing provisions of this section or under any of the other provisions of this Part of this Act, or, if any other individual is entitled to such a deduction, that that other individual has relinquished his claim thereto, he shall be entitled in respect of the child to the same deduction as if the child were a child of his.

(3) No deduction shall be allowed under this section in respect of any child who is entitled in his own right to an income exceeding forty pounds a year:

Provided that in calculating the income of the child for the purposes of the foregoing provision no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary or other similar educational endowment.

(4) If any question arises as to whether any person is entitled to an allowance under this section in respect of a child who is over the age of sixteen years, as being a child who is receiving such full-time instruction as aforesaid, the Commissioners of Inland Revenue may, on the request of the Income Tax Commissioners concerned, consult the Board of Education.

In the application of this subsection to Scotland and Ireland the Scottish Education Department and the Lord Lieutenant of Ireland shall respectively be substituted for the Board of Education.

22.—(1) If the claimant proves that he maintains at his own expense any person, being a relative of his or of his wife who is incapacitated by old age or infirmity from maintaining himself, or his or his wife's widowed mother, whether incapacitated or not, and being a person whose total income from all sources does not exceed fifty pounds a year, he shall be entitled to a deduction of twenty-five pounds in respect of each person whom he so maintains, and a like deduction shall be made in the case of a claimant who, by reason of old age or infirmity, is compelled to depend upon the services of a daughter resident with and maintained by him or her.

(2) Where two or more persons jointly maintain any such person as aforesaid, the deduction to be made under this section shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of that person.

(3) This section shall apply to a claimant being a female person as it applies to a claimant being a male person with the substitution of "husband" for "wife."

23. The rate at which the first two hundred and twenty-five pounds of the taxable income of an individual shall be charged to income tax shall be half the standard rate of tax.

24.—(1) Subject as hereinafter provided, no allowance in respect of earned income, and no deduction from assessable income, shall be given or made, and income tax on the first two hundred and twenty-five pounds of the taxable income shall not be chargeable at the reduced rate, under the foregoing provisions of this Part of this Act, and no relief shall be granted under section thirty-two of the Income Tax Act, 1918, in the case of any individual who is not resident in the United Kingdom:

Provided that the foregoing provision shall not apply in the case of any individual who satisfies the Commissioners of Inland Revenue that he or she—

(a) is a British subject; or

(b) is a person who is or has been employed in the service of the Crown, or who is employed in the service of any missionary society or in the service of any native State under the protection of His Majesty; or

(c) is resident in the Isle of Man or the Channel Islands; or

(d) has previously resided within the United Kingdom and is resident

abroad for the sake of his or her health or the health of a member of his or her family resident with him or her; or

(e) is a widow whose late husband was in the service of the Crown;

so, however, that no such allowance, deduction, reduction of rate, or relief as aforesaid shall be given so as to reduce the amount of the income tax payable by that individual below an amount which bears the same proportion to the amount which would be payable by him by way of tax if the tax were chargeable on his total income from all sources, including income which is not subject to income tax charged in the United Kingdom, as the amount of the income subject to income tax so charged bears to the amount of his total income from all sources.

(2) Any person who is aggrieved by a decision of the Commissioners of Inland Revenue under this section may appeal to the Special Commissioners.

25.—(1) Where, on an application made for the purpose under the provisions of the Income Tax Acts, income tax for any year is assessable and chargeable on the incomes of the husband and wife respectively as if they were not married:—

(a) All the provisions of the Income Tax Acts relating to claims for an allowance in respect of earned income and deductions from assessable income and for relief under section thirty-two of the Income Tax Act, 1918, and the proof to be given with respect thereto, shall apply as if they were not married; and

(b) The income of the husband and the wife shall be aggregated in estimating the amount to be repaid or allowed in respect of the allowances or deductions aforesaid, and for the purpose of the reduction of the rate of tax on the first two hundred and twenty-five pounds of the taxable income, and the total amount of any allowances or deductions given or made in respect of the incomes of husband and wife shall not exceed such an amount as would have been given on account of those allowances and deductions if such an application as aforesaid had not been made, and no reduction of the rate of tax shall be allowed in respect of more than two hundred and twenty-five pounds of the taxable income in all; and

(c) The benefit of any such allowance or deduction and the reduction of the rate of tax on the first two hundred and twenty-five pounds of the taxable income may be given either by way of reduction of the amount of tax to be paid, or by repayment of any excess of tax which has been paid, or by both of these means, as the case requires, and shall be given to the husband and the wife as regards the allowance in respect of earned income in proportion to the amounts of their respective earned incomes, and as regards deductions from assessable income and the reduction of the rate of tax, in proportion to the amounts of their respective assessable incomes:

Provided that in the case of relief given under section thirty-two of the Income Tax Act, 1918, the benefit of the relief shall be given to the husband or wife, as the case may be, by whom the payment is made, and in the case of a deduction claimed in respect of a child under subsection (2) of the foregoing section of this Act relating to the deduction in respect of children, or in respect of any person under the foregoing section of this Act relating to the deduction in respect of dependent relatives, shall be given to that one of the married persons by whom the child or relative is maintained; and

(d) For the purpose of any of the above-mentioned allowances or deductions or reliefs a return may be made by the husband or the wife of the total income of the husband and wife, but if the Commissioners of Inland Revenue are not satisfied with the return they may obtain a return from the wife or husband, as the case may be.

(2) The Commissioners of Inland Revenue may require returns for the purposes of this section to be made at any time, and the provisions of the Income Tax Acts relating to penalties for neglect or refusal to deliver or for delay in delivering true and correct statements of profits or gains shall, with the necessary modifications, apply in the case of the neglect or refusal to make or wilful delay in making any such return.

26. Section thirty-two of the Income Tax Act, 1918 (which relates to relief in respect of life insurance premiums), shall be amended as follows:—

(1) For the words in subsection (1) from "(b) who is" to the end of the subsection there shall be substituted the following words (*a*): . . .

(2) At the end of subsection (2) there shall be inserted the words "at the appropriate rate."

(3) In paragraph (c) of subsection (3) after the words "or not" there shall be inserted the words "the amount of the tax calculated at the appropriate rate on an amount equal to."

(4) In paragraph (d) of subsection (3) for the words "exceed one hundred pounds in all" there shall be substituted the words "in any case exceed the amount of the tax calculated at the appropriate rate on one hundred pounds."

(5) In paragraph (e) of subsection (3) for the words "three shillings in the pound" there shall be substituted the words "half the standard rate of tax."

(6) In the proviso to paragraph (e) of subsection (3) after the word "business" there shall be inserted the words "or for the benefit of the wife or widow of any such employee or person or of his children or other dependants."

(*a*) The words substituted will be found set out in sect. 32 of the Act of 1918.

(7) At the end of the section there shall be inserted the following new subsections (*b*):— . . .

27.—(1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income tax for any year of assessment on any part of his income proves to the satisfaction of the special commissioners that he has paid Dominion income tax for that year in respect of the same part of his income, he shall be entitled to relief from United Uingdom income tax paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

(a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom tax, the rate at which relief is to be given shall be the Dominion rate of tax:

(b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of United Kingdom tax.

For the purpose of this section, the expression "the appropriate rate of United Kingdom tax" means the rate at which the claimant for the year to which the claim relates has borne or is liable to bear United Kingdom income tax, and where the claimant is liable to United Kingdom super-tax the expression "the appropriate rate of United Kingdom tax" means a rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom income tax and super-tax respectively for that year.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an adjustment shall be made in allowing to that individual any relief to which he may be entitled under the provisions of this Part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income as may be necessary to secure that the amount of United Kingdom income tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV. or Case V. of Schedule D or in any other provision of the Income Tax Acts, no deduction shall be made on account of the payment of Dominion income tax in estimating income for the purposes of United Kingdom income tax, and where income tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income tax arises or is received, or as a direct charge in respect

(*b*) **The new sub-sects. (8) and (9) will be found set out in sect. 32 of the Act of 1918.**

of that income, the income so subject to United Kingdom income tax shall be deemed to be income arising or received after deduction of Dominion income tax and an addition shall, in estimating income for the purposes of the United Kingdom income tax, be made to that income of the proportionate part of the income tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income tax directly charged or chargeable in the Dominion in respect of that income:

Provided that—

(a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the special commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount of the addition to be made under this subsection, the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI. of Schedule D; and

(b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income tax in respect of the payment of United Kingdom income tax, then in assessing or charging income tax in the United Kingdom in respect of income assessed or charged to income tax in that Dominion a deduction shall be allowed in estimating income for the purpose of United Kingdom income tax of an amount equal to the difference between the amount of the Dominion income tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom income tax in respect of the Dominion income tax for the period on the income of which the assessment or charge to United Kingdom income tax is computed.

In this subsection the expression "dividends" includes any interest, annuities, dividends, shares of annuities, pensions, or other annual payments or sums in respect of which tax is charged under the Rules applicable to Schedule C or under Rule VII. of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D and E, a body of persons is entitled to deduct income tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income tax.

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income tax in respect of the

payment of United Kingdom income tax, the obligation as to secrecy imposed by the Income Tax Acts upon persons employed in relation to Inland Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed both from United Kingdom income tax and from Dominion income tax.

(7) The Commissioners of Inland Revenue may from time to time make regulations generally for carrying out the provisions of this section, and may, in particular, by those regulations provide:—

(a) For making such arrangements with the Government of any Dominion to which the last preceding subsection applies as may be necessary to enable the appropriate relief to be granted:

(b) For prescribing the year which in relation to any Dominion income tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income tax.

(8) In this section:—

(a) The expression "Dominion" means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions:

(b) The expressions "United Kingdom income tax" and "United Kingdom super-tax" mean respectively income tax and super-tax chargeable in accordance with the provisions of the Income Tax Acts:

(c) The expression "Dominion income tax" means any income tax or super-tax charged under any law in force in any Dominion, if that tax appears to the special commissioners to correspond with United Kingdom income tax or super-tax:

(d) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income tax paid for the year by the amount of the income in respect of which the Dominion income tax is charged for that year, except that where the Dominion income tax is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the special commissioners.

For the purposes of this section, the rate of United Kingdom income tax shall be ascertained by dividing by the amount of the taxable income of the person concerned the amount of tax payable by that person on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of this section, and the rate of United Kingdom super-tax shall be ascertained by dividing the amount of the super-tax payable

by any person by the amount of that person's total income from all sources as estimated for super-tax purposes.

28.—(1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school, or other educational establishment, shall be exempt from income tax (including super-tax), and no account shall be taken of any such income in computing the amount of income for the purposes of the Income Tax Acts.

(2) In this section the expression "scholarship" includes an exhibition, bursary, or any other similar educational endowment.

(3) If any question arises whether any income is income arising from a scholarship held as aforesaid, the Commissioners of Inland Revenue may, on the request of the Income Tax Commissioners concerned, consult the Board of Education.

In the application of this subsection to Scotland and Ireland, the Scottish Education Department and the Lord Lieutenant, respectively, shall be substituted for the Board of Education.

29. Section nineteen of the Finance Act, 1919, shall have effect as though for the word "seventy" there were substituted the words "one hundred and five," for the word "sixty" there were substituted the word "ninety," and for the words "fifty-two" there were substituted the words "seventy-eight."

30. Section twenty-five of the Finance Act, 1919 (which relates to the tax on income from converted Government securities), shall apply to securities which have been exchanged for five and three-quarter per cent. Exchequer Bonds, 1925, or for any other Government securities which may be issued at any time after the commencement of this Act, as it applies to securities which have been accepted as the equivalent of cash in payment for allotments of Victory Bonds.

31. Paragraphs (1), (2) and (3) of Rule four of the Rules applicable to Cases I. and II. of Schedule D (which provide for adjustment of income tax in cases where excess profits duty has been paid), shall have effect as if references therein to excess profits duty included corporation profits tax.

32. The amendments specified in the second column of the Third Schedule to this Act, which are consequential or relate to minor details, shall be made in the provisions of the Income Tax Act, 1918, specified in the first column of that schedule.

33. In this Part of this Act and in any subsequent enactment relating to income tax, except where otherwise expressly provided—

The expression "earned income" means income which is earned income within the meaning of section fourteen of the Income Tax Act, 1918, and also includes any income arising in respect of Civil List pensions granted under the Civil List Act, 1837, as amended by any subsequent enactment:

The expression "relative" includes any person of whom the person claiming a deduction had the custody and whom he maintained at his own expense while that person was under the age of sixteen years:

The expression "standard rate of tax" means the full rate of income tax charged for the year:

The expression "assessable income" in the case of any income other than earned income means the amount of that income as estimated in accordance with the provisions of the Income Tax Acts.

PART V.—CORPORATION PROFITS TAX.

. . . . .

PART VII.—GENERAL.

. . . . .

61.—(1) Where any assessment to income tax, excess profits duty, or munitions exchequer payments for any year or period, or any duplicate of assessment to income tax for any year, or any return or other document relating to income tax, excess profits duty, or munitions exchequer payments, has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the commissioners, surveyors, assessors, collectors, and other officers respectively having powers in relation to income tax, excess profits duty, or munitions exchequer payments, as the case may be, may, notwithstanding anything in any enactment to the contrary, do all such acts and things as they might have done, and all acts and things done under or in pursuance of this section shall be as valid and effectual for all purposes as they would have been if the assessment or duplicate of assessment had not been made, or the return or other document had not been made or furnished, or required to be made or furnished:

Provided that, where any person who is charged with income tax, excess profits duty, or munitions exchequer payments in consequence or by virtue of any act or thing done under or in pursuance of this section, proves to the satisfaction of the commissioners having jurisdiction in the case that he has already paid any income tax, excess profits duty, or munitions exchequer payments for the same year or period in respect of the subject matter and on the account in respect of and on which he is so charged, relief shall be given to the extent to which the liability of that person has been discharged by the payment so made either by abatement from the charge or by repayment, as the case may require.

(2) In this section the expression "Commissioners" means, as the case may require, either the Commissioners of Inland Revenue or the Income Tax Commissioners concerned and the expression "income tax" includes "super-tax."

64.—(1) *Construction, short title, and repeal.*

. . . . . .

Part II. of this Act shall be construed together with the Income Tax Acts.

. . . . . .

(2) This Act may be cited as the Finance Act, 1920.

(3) The Acts set out in the Fourth Schedule of this Act are hereby repealed to the extent mentioned in the third column of that schedule.

THIRD SCHEDULE.

CONSEQUENTIAL AND MINOR AMENDMENTS OF INCOME TAX ACT, 1918.

Enactments to be amended.	Nature of Amendment.
Section 4 .	The words "two thousand pounds" shall be substituted for the words "two thousand five hundred pounds."
Section 5 .	For the words "estimated for the purposes of exemption or abatement under this Act" there shall be substituted the words "required to be estimated in a return made in connection with any claim for a deduction from assessable income."
Section 16 .	A reference to any allowance or deduction shall be substituted for the reference to any exemption, abatement or relief under the preceding provisions of Part III. of the Income Tax Act, 1918.
Section 17 .	The words "allowance or deduction" shall be substituted for the words "exemption, abatement."
Section 18 .	The words "the Income Tax Acts" shall be substituted for the words "any exemption, abatement, or relief under this Act."
Section 19 .	A reference to any claim for an allowance or deduction shall be substituted for the reference to the claim under the preceding provisions of Part III. of the Income Tax Act, 1918.
Section 20 .	A reference to any allowance or deduction shall be substituted for the reference to any exemption, abatement, or relief under the preceding provisions of Part III. of the Income Tax Act, 1918.
Section 22 .	A reference to any allowance or deduction shall be substituted for the references to any exemption, abatement, or relief which is dependent wholly or partially on total annual income.
Section 23 .	The words "allowance or deduction" shall be substituted for the words "exemption, abatement, or relief."
Section 27 .	A reference to any allowance or deduction shall be substituted for the reference to any exemption, abatement, or relief under the preceding provisions of Part III. of the Income Tax Act, 1918.
Section 28 .	A reference to claims for any allowance or deduction shall be substituted for the reference to claims under the preceding provisions of Part III. of the Income Tax Act, 1918.
Section 29 .	The words "allowance or deduction" shall be substituted for "exemption, abatement."
Section 30 .	A reference to any allowance or deduction shall be substituted for the reference to any exemption, abatement, or relief thereinbefore described in the Income Tax Act, 1918.
Section 32 .	In subsection (2) the word "annual" shall be omitted. In paragraph (a) of subsection (3) the word "chargeable" shall be omitted, and the words "the provisions of the Income Tax Acts" shall be substituted for the words "this Act." Paragraph (b) of subsection (3) shall be omitted. Subsection (4) shall be omitted.

THIRD SCHEDULE—*continued.*

Enactments to be amended.	Nature of Amendment.
Section 39 .	The following shall be substituted for proviso (i) to paragraph (b) of subsection (3): "Any such interest shall be chargeable under Case III. of Schedule D."
Section 105 .	In paragraph (b) of subsection (1) the words "one hundred and fifty pounds" shall be substituted for the words "the sum for the time being fixed as the limit for total exemption from tax."
Section 236 .	The words "allowance or deduction" shall be substituted for the words "exemption, abatement."
First Schedule .	In paragraph (5) of Rule 8 of No. V. in Schedule A. the words "the Income Tax Acts which relate to claims for any allowance or deduction" shall be substituted for the words "this Act which relates to claims for exemption, abatement, or relief."
Fifth Schedule.	In paragraph XVII. a reference to any allowance or deduction shall be substituted for the reference to any exemption, abatement, or relief, dependent on total income.

NOTE.—In this Schedule the expression "allowance or deduction" means any allowance, deduction, or reduction of rate made or allowed under sections sixteen to twenty-three, both inclusive, of this Act.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
. . .	. . . . .	. . . . .
8 & 9 Geo. 5, c. 40.	The Income Tax Act, 1918.	Sections nine to thirteen; subsections (1) and (2) of section fourteen; sections fifteen: twenty-one, twenty-four, twenty-six, thirty-one, forty-two, fifty, fifty-two, and fifty-five.
9 & 10 Geo. 5, c. 32.	The Finance Act, 1919.	Sections three, twenty, twenty-one, twenty-three, twenty-seven; and the First Schedule.

STATUTORY ORDERS.

SUPER-TAX.

REGULATIONS (*a*) MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 72 (8) OF THE FINANCE (1909-10) ACT, 1910 (10 EDW. 7, c. 8). (STAT. R. & O. 1910, No. 666.)

The Special Commissioners shall serve a Notice on every person required by them to make a Return of his Total Income from all Sources. Such Notice shall be in the form hereto attached or in such amended form as the Commissioners of Inland Revenue shall approve.

On the making of an Assessment by the Special Commissioners they shall cause Notice to be served as hereinafter mentioned on the person assessed of the amount of the Assessment and of the Duty charged thereon.

All liability to the Super-Tax shall be assessable at the Office of the Special Commissioners, London, and Appeals shall be heard in London, Edinburgh and Dublin, and at such other towns as the Commissioners of Inland Revenue may direct.

A person aggrieved by an Assessment made upon him shall at any time within 28 days from the date of the service of the Notice of such Assessment, or within such further time as the Special Commissioners shall allow, be entitled to give notice to the Special Commissioners of his intention to appeal to them against the Assessment, and every such Notice shall specify the grounds of Appeal.

The Super-Tax payable shall be remitted by the person assessed to the Accountant-General of Inland Revenue, at his Office, Somerset House, London, on or before the 1st January in each year.

Any notice required to be served on any person under these Regulations may be either delivered to such person or left at his usual or last known place of abode or sent by post by (prepaid) registered letter addressed to such person at his usual or last known place of abode, and such service shall be deemed sufficient service for the purpose of these Regulations.

(*a*) Continued in force by Income Tax Act, 1918, Sect. 238, Proviso (a), *supra*, p. 407.

WEEKLY WAGE-EARNERS.

Regulations, dated October 25, 1920, made by the Commissioners of Inland Revenue under the Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), with respect to the Assessment, Charge and Collection of Income Tax in the case of Weekly Wage-earners, and the Procedure to be adopted for the purpose. (Stat. R. & O. 1920, No. 1991.)

The Regulations with respect to weekly wage-earners, dated the 29th day of March, 1916 (*a*), and the 15th day of December, 1916 (*b*), are hereby revoked, and the following Regulations shall have effect in substitution therefor:—

1. The four quarters for which quarterly assessments are to be made shall end respectively on the following dates in each year:—

(1) 5th July,
(2) 5th October,
(3) 5th January,
(4) 5th April.

2. Income Tax in the case of wage-earners shall be assessed and charged by the Inspector of Taxes, who for this purpose may, in addition to the powers of an Inspector of Taxes, exercise all the powers of an Assessor and of any Additional Commissioners or General Commissioners, except the power of hearing and determining an appeal.

3. Subject to the provisions of the Income Tax Act, 1918, and these Regulations, all the provisions and rules of the Income Tax Acts which are applicable to Schedule E shall apply to quarterly assessments.

4. The Inspector of Taxes shall serve on every person assessed by whom any tax is payable a notice of the assessment made upon him, addressed to him either at his place of employment or at his usual or last known place of abode.

5. An additional assessment may be made by the Inspector of Taxes on a person at any time not later than three years after the expiration of the year of assessment, in respect of any sum not assessed or insufficiently assessed on that person in any or all of the quarterly assessments for that year, or in respect of any unauthorized allowance, deduction or relief which has been allowed in respect of any such quarterly assessment.

6. An allowance not exceeding one-fourth of the annual amount of any allowance, deduction or relief which may be lawfully granted under Section 32 of the Income Tax Act, 1918, as amended by Section 26 of the Finance Act, 1920, or under any of the Sections 17 to 23 of the Finance Act, 1920, may be deducted from each quarterly assessment on a wage-earner, and where full effect has not been given to the amount so allowable in any quarter, the residue or any part of the residue of the allowance may be deducted from any assessment which is made for any subsequent quarter of the same year.

7. Where a person assessed in a quarterly assessment proves to the satisfaction of the Commissioners of Inland Revenue that any allowance, deduction or relief to which he is entitled under the provisions referred to in Regulation No. 6 has not been wholly allowed in the quarterly assess-

(*a*) S.R. & O., 1916, No. 212. (*b*) S.R. & O., 1916, No. 887.

ments, or otherwise, repayment shall be made by the Commissioners of the amount of tax overpaid.

8. Every employer, when required by notice from the Inspector of Taxes, shall, within fourteen days from the date of such notice, deliver to the Inspector of Taxes a return of the names and places of residence, and the wages for the quarter, of all wage-earners employed by him whose wages for the quarter to which such notice relates have amounted to £37: 10: 0 or upwards. The employer shall also make a return in like manner of the wages of any wage-earner for the quarter whenever particulars in respect of that person are demanded by the Inspector of Taxes.

9. Every wage-earner when required by notice from an Inspector of Taxes shall within fourteen days from the date of such notice deliver to the Inspector a return of his wages for the year, or for any quarter or quarters therof, as the notice may require.

10. Any person aggrieved by any quarterly or additional quarterly assessment made upon him must give notice thereof to the Inspector of Taxes, stating the grounds of his objection, within twenty-one days after the service of the notice of such assessment.

11. On receipt of any such notice of objection the Inspector of Taxes may, on proof to his satisfaction agree with the wage-earner as to the correct amount to be assessed and may thereupon amend the assessment. Notice of the amended assessment shall then be served by the Inspector of Taxes upon the wage-earner.

12. Where, on receipt of any such notice of objection, the Inspector of Taxes is unable to agree with the wage-earner as to the correct amount to be assessed, the Inspector shall, on application by the wage-carner, give notice to the Clerk to the General Commissioners of the Division in which the wage-earner is assessed, and that notice shall operate as a notice of appeal by the wage-earner. The General Commissioners shall hear and determine every such appeal in like manner as an appeal under the Income Tax Acts.

13. Notice of the day and time fixed for hearing any appeal shall be given by the Clerk to the Commissioners to the Inspector of Taxes and to the appellant respectively, fourteen days at least before the day fixed for the hearing of the appeal. Any such notice may be served by post.

14. Where no objection to the assessment is made within the prescribed period the tax charged under any quarterly or additional quarterly assessment shall be payable within twenty-one days after the service of the notice of assessment.

15. Where notice of objection to the assessment is given within the prescribed period and the assessment is amended by the Inspector of Taxes, the tax shall be payable within fourteen days of the issue of a notice by the Inspector of the amended assessment.

16. The tax due on any assessment as determined by the General Commissioners on appeal shall be payable within fourteen days from the date of their determination of the appeal.

17. Whenever any person has removed to or resides or happens to be in any parish other than the parish in which a charge to tax has been made upon him, and the said tax or any part thereof is in arrear and unpaid, the Inspector of Taxes may authorize any Collector appointed by the Commissioners of Inland Revenue for the first-mentioned parish to demand payment thereof, and on non-payment to recover the same in the manner prescribed by the Income Tax Acts.

Where there is no Collector so appointed, the Inspector may issue a certificate setting out the facts as aforesaid to the General or other Commissioners acting for the Division comprising the first-mentioned parish, who shall cause the said amount of tax to be raised and levied under the provisions of the Income Tax Acts and to be paid over to the account of the Collector or Collectors for the parish in which the tax is charged.

* * * * *

23. If any sum charged upon a person in any such duplicate of assessment is unpaid when the same becomes due the Collector in England or Ireland shall have the like power of distress as may be exercised by a Collector in the case of any Income Tax charged by the General Commissioners. In Scotland any such sum which is unpaid when the same becomes due may be recovered by the Collector of quarterly assessments in the manner prescribed by the Income Tax Acts in relation to recovery in Scotland in the case of other assessments to Income Tax.

* * * * *

27. Every Collector appointed by the Commissioners of Inland Revenue shall deliver Schedules of deficiencies as prescribed by Section 175 of the Income Tax Act, 1918, to such Commissioners, who shall exercise all the powers of General Commissioners in relation thereto, and may authorize any Inspector of Taxes to exercise on their behalf such powers as relate to the verification of the Schedules by oath or affirmation of the Collector and to the examination of a Collector on oath or affirmation. The Commissioners of Inland Revenue shall in such cases cause to be prepared Schedules of discharge and defaulters. Any such Schedules of defaulters shall have the same effect as if made in pursuance of the Income Tax Acts, 1918.

28. Any notice to be given by an Inspector of Taxes to an employer or wage-earner or Collector of Taxes, as the case may be, may be served by post.

29. All forms and books required to be used in assessing, charging and collecting tax assessed by quarterly assessments shall be provided or approved by and shall be the property of the Commissioners of Inland Revenue.

30. Summary proceedings for the recovery of tax as a civil debt shall be commenced in the name of the Collector.

31. In these Regulations the expression "Parish" includes any area for which a separate Collector of quarterly assessments is appointed.

"Wage-earner" means a weekly wage-earner employed by way of manual labour chargeable to Income Tax in respect of his wages in each quarter of the year instead of the whole year.

"General Commissioners" means the Commissioners for the general purposes of the Income Tax, and as regards Ireland means the Commissioners for the special purposes of the Income Tax Acts.

"Served by Post" means service by post as defined by Section 26 of the Interpretation Act, 1889 (*a*).

(*a*) 52-3 V., c. 63.

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